

COUNCIL DOCKET OF

Oct 7, 2008☐ Supplemental ☐ Adoption ☐ Consent ☒ Unanimous Consent Rules Committee Consultant Review

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Amendments to San Diego Municipal Code Section 26.0701-26.0730, Commission for Arts and Culture

☒ Reviewed ☐ Initiated By Rules On 6/25/08 Item No. 2

## RECOMMENDATION TO:

Approve the staff recommendation and refer this item to the City Council for consideration, with additional clean up by the City Attorney of the Municipal Code amendments.

VOTED YEA: Madaffer, Peters, Frye, Hueso, Young

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Staff Report, Amended/Proposed version of SDMC 26.701 et seq., and strike-out version, dated May 29, 2008; Commission for Arts and Culture PowerPoint; S.D. Arts and Culture Policy Recommendations with CPI's August 28, 2007, report

COUNCIL COMMITTEE CONSULTANT

Elyse Lowe

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CITY OF SAN DIEGO  
**EXECUTIVE SUMMARY**

DATE ISSUED: May 29, 2008 REPORT NO.

ATTENTION: Honorable Mayor and City Council

ORIGINATING  
DEPARTMENT: Commission for Arts and Culture

SUBJECT: Amending Chapter 2, Article 6, Division 7 of the San Diego Municipal Code

REFERENCES: 1) Staff Report  
2) Revised Version of Municipal Code Chapter 2, Article 6, Division 7  
3) Strikeout Version of Municipal Code Chapter 2 Article 6, Division 7

COUNCIL  
DISTRICT(S): Citywide

CONTACT: Victoria L. Hamilton, Executive Director; (619) 236-6778

**REQUESTED ACTION:**

Amend Chapter 2, Article 6, Division 7 of the San Diego Municipal Code by amending sections 26.0701, 26.0702 and 26.0703; by moving portions of the original section 26.0703 into the amended sections 26.0704 – 26.0707; by amending sections 27.0704 – 27.0715; by amending and renumbering section 26.0705 to 26.0723, section 26.0706 to 26.0716, section 26.0707 to 26.0717, section 26.0708 to 26.0718, section 26.0709 to 26.0719, section 26.0710 to 26.0720; section 26.0711 to 26.0721, section 26.0712 to 26.0722, and by adding new sections 26.0724 – 26.0730 all relating to the Commission for Arts and Culture, the Executive Director and the staff of the Commission for Arts and Culture, and the management of artworks owned by the City.

**STAFF RECOMMENDATION:**

Approve the requested action.

**EXECUTIVE SUMMARY:**

As part of the ongoing City-wide efforts to control spending, increase cash flow, create efficiencies and accurately document City-owned assets, the Commission for Arts and Culture (Commission), has conducted a three-year examination of the San Diego Municipal Code Chapter 2: Government; Article 6: Board and Commissions; Division 7: Commission for Arts and Culture Chapter 2, Article 6, Division 7 of the San Diego Municipal Code, hereinafter referred to as "SDMC 26.0701 et. seq." This section of the Municipal Code establishes the Commission and outlines its purpose, duties and functions. The Commission's duties and functions have evolved, necessitating the proposed amendments.

The City Council's approval of the requested action outlined above is anticipated to result in:

- Updated duties and functions that accurately reflect the contemporary work of the Commission;
- Delineation of the duties and functions of the Executive Director and Commission staff;
- Clarification that the Executive Director, not the Commission, acts as the City's fiduciary agent in the management of the public funds allocated to the Commission by the Mayor and City Council each year;
- Formal establishment of a steward for the City's art collection, a role the Commission has been fulfilling for 20 years;
- Resources and labor saved through the establishment of the Commission as the single point of contact for the oversight of the City's art collection including processing art donations and loans, deaccessioning, maintenance, repair, conservation, operation, storage and exhibition of the City's art assets;
- Elimination of confusion and duplicated effort through the clarification and delineation of the work of the Commission for Arts and Culture and the Library Department's Visual Arts Program;
- Improved customer service for art donors, lenders and borrowers;
- An increase in the quality and, therefore, the value of the City's art collection;
- Accurate documentation of the City's art assets;
- Adherence to the standards of the Governmental Accounting Standard Board (GASB 34) and the City's *2004 Public Art Master Plan*;
- Clarified conflict of interest requirements for Commissioners;
- Clarified appointment methods, terms and qualifications for Commissioners.

#### FISCAL CONSIDERATIONS:

No costs will be incurred by approval of the proposed amendments. However, it is anticipated that the amendments may lead to improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets.

#### PREVIOUS COUNCIL and/or COMMITTEE ACTION:

San Diego Municipal Code Chapter 2: Government; Article 6: Board and Commissions; Division 7: Commission for Arts and Culture was added 5-15-1989 by O-17298 N.S. Amended, added and/or renumbered 4-20-1992, by O-17757 N.S.; 4-10-2000, by O-18786 N.S.; 5-17-2004, by O-19280 N.S.

#### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 18, 2008, the Commission voted to recommend to the Mayor and City Council approval in concept of the proposed amendments to SDMC 26.0701 et. seq. In addition, the research and development of the proposed amendments engaged numerous individuals, groups and organizations, both inside and outside the City, over the course of three years. Please see the enclosed staff report for a complete list.

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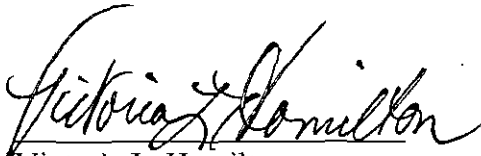
KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the Commission, the Executive Director and Commission staff as well as elected officials, City staff and San Diego's citizenry. Projected impacts may include improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets. Increased labor associated with educating City staff about any new or amended duties and functions assigned to the Commission, the Executive Director and Commission staff may be possible.

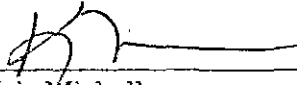
The City's requirements, adopted in 2004, for the inclusion of art and/or cultural space in eligible private developments are not materially changed by these proposed amendments.

None of the proposed amendments shall be construed to limit or abridge the powers or exclusive jurisdiction of the City's Library Department over its Visual Arts Program.

Respectfully submitted,



Victoria L. Hamilton  
Executive Director  
Commission for Arts and Culture



Kris Michell  
Deputy Chief for Community and Legislative Services  
Community and Legislative Services

CITY OF SAN DIEGO  
**STAFF REPORT**

DATE ISSUED: May 29, 2008 REPORT NO.

ATTENTION: Honorable Mayor and City Council

ORIGINATING  
DEPARTMENT: Commission for Arts and Culture

SUBJECT: Amending San Diego Municipal Code Chapter 2: Government; Article 6:  
Board and Commissions; Division 7: Commission for Arts and Culture

REFERENCES: 1) Revised Version of Municipal Code Chapter 2, Article 6, Division 7  
2) Strikeout Version of Municipal Code Chapter 2 Article 6, Division 7

COUNCIL  
DISTRICT(S): Citywide

CONTACT: Victoria L. Hamilton, Executive Director; (619) 236-6778

REQUESTED ACTION:

Amend Chapter 2, Article 6, Division 7 of the San Diego Municipal Code by amending sections 26.0701, 26.0702 and 26.0703; by moving portions of the original section 26.0703 into the amended sections 26.0704 – 26.0707; by amending sections 27.0704 – 27.0715; by amending and renumbering section 26.0705 to 26.0723, section 26.0706 to 26.0716, section 26.0707 to 26.0717, section 26.0708 to 26.0718, section 26.0709 to 26.0719, section 26.0710 to 26.0720; section 26.0711 to 26.0721, section 26.0712 to 26.0722, and by adding new sections 26.0724 – 26.0730 all relating to the purpose, duties and functions of the Commission for Arts and Culture, the Executive Director and the staff of the Commission for Arts and Culture, and the management of artworks owned by the City.

STAFF RECOMMENDATION:

Approve the requested action.

SUMMARY:

The establishment of the City of San Diego Commission for Arts and Culture (Commission) by a 1989 ordinance is codified in Chapter 2, Article 6, Division 7 of the San Diego Municipal Code. The Commission's purpose is to serve in an advisory capacity to the Mayor and City Council on promoting, encouraging and increasing support for the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

Fifteen diverse volunteers comprise the Commission and include arts and culture patrons, business leaders, professionals including lawyers and financial management experts, community activists, design experts, and artists. Through effective public policy, advocacy, strategic partnerships and funding, the Commission supports non-profit organizations, neighborhood arts

programs, festivals, public art, cultural tourism and innovative programming which all contribute to the quality of life, the economy and the vibrancy of San Diego. The Commission administers the Allocations Programs, through which Transient Occupancy Tax funds support over 100 local non-profit organizations through a rigorous, review process which addresses fiscally sound and accountable management practices and encourages the highest quality of arts and culture offerings. The Commission's Public Art Program provides the process through which the City commissions original works of art to be integrated into new capital improvement projects and through which eligible private developments are required to include art or cultural space.

As active participants in the ongoing, Citywide efforts to control spending, increase cash flow, create efficiencies and accurately document City-owned assets, the Commission was motivated to examine and evaluate, over a three-year span, the accuracy and effectiveness of Chapter 2, Article 6, Division 7 of the San Diego Municipal Code, hereinafter referred to as "SDMC 26.0701 et. seq."

The evaluation revealed that, over the 20 years since the Commission was established, a significant gap has formed between the contemporary work of the Commission and what SDMC 26.0701 et. seq. currently reflects. In addition to developing a range of amendments designed to remedy that gap, the Commission identified two fundamental shortcomings in SDMC 26.0701 et. seq. and is proposing remedial amendments:

1. Absence of duties and functions of the Executive Director and Commission staff.

SDMC 26.0701 et.seq. does not currently distinguish the duties and functions of the Executive Director nor of the Commission staff. In contrast, the San Diego Municipal Code sections which establish the Ethics Commission (added 6-5-2001) and the City of San Diego Commission on Gang Prevention and Intervention (added 4-7-2006) do specify the roles and work of the Executive Directors and staff of each.

Additionally, SDMC 26.0701 et.seq. does not currently distinguish between the fiduciary responsibilities of the Commission, a board of appointed volunteers, and the Executive Director, a City employee. For greater fiscal accountability, the Executive Director should be the recognized fiduciary agent for the management of the public funds allocated to the Commission by the Mayor and City Council each year.

2. No steward for the City's art collection has been formally assigned over the span of nearly a century.

Since its establishment in 1989, the Commission has voluntarily assumed the role of the steward for the City's art collection. The City owns 1,144 diverse works of portable and fixed art acquired through a variety of methods over the past 99 years. The oldest artwork in the City's collection is Irving Gill's 1909 Horton Plaza Fountain and the most recent artwork to be accessioned into the City's art collection is Barbara Grygutis' 2007 public artwork for Fire Station 47 in Pacific Highlands Ranch. Early on, donations were the primary source of the City's art acquisitions. During the 1930s, the Works Progress Administration/Federal Arts Project yielded a significant number of artworks that came under the care of the City. In the late 1980s, the City passed a policy encouraging the inclusion of original, commissioned artwork into capital improvement projects, and, as recently as 2004, the City Council

amended Council Policy 900-11 to require the expenditure of 2% for public art in the City's eligible capital improvement projects.

When an agency acquires art, it also assumes the responsibility for caring for that art. Beginning 19 years ago, the Commission began funding and conducting, through both paid consultants and unpaid interns, comprehensive surveys of the City's art collection in order to record the type, location and condition of the City's art assets. To date, three such surveys have been completed. In addition, the Commission has applied for, received and administered numerous grants from private foundations and federal agencies such as The Getty Foundation and the National Endowment for the Arts for the purpose of funding professional conservation surveys of selected artworks and funding the conservation of other selected artworks.

The Commission also engages experts in the field of art collections management whenever possible. One of the Commission's advisory subcommittees, the Public Art Committee, includes a volunteer museum registrar who provides professional, practical advice to the Commission on the methods and practices of recording a collection of artworks. A current member of Commission staff holds a Masters degree in Museum Studies and has extensive experience as an art appraiser.

The City Council's approval of the requested action outlined above is anticipated to result in:

- Updated duties and functions that accurately reflect the contemporary work of the Commission;
- Delineation of the duties and functions of the Executive Director and Commission staff;
- Clarification that the Executive Director, not the Commission, acts as the City's fiduciary agent in the management of the public funds allocated to the Commission by the Mayor and City Council each year;
- Formal establishment of a steward for the City's art collection, a role the Commission has been fulfilling unofficially for 19 years;
- Resources and labor saved through the establishment of the Commission as the single point of contact for the oversight of the City's art collection including processing art donations and loans, deaccessioning, maintenance, repair, conservation, operation, storage and exhibition of the City's art assets;
- Elimination of confusion and duplicated effort through the clarification and delineation of the work of the Commission for Arts and Culture and the Library Department's Visual Arts Program;
- Improved customer service for art donors, lenders and borrowers;
- An increase in the quality and, therefore, the value of the City's art collection;
- Accurate documentation of the City's art assets;
- Adherence to the standards of the Governmental Accounting Standard Board (GASB 34) and the City's *2004 Public Art Master Plan*;
- Clarified conflict of interest requirements for Commissioners;

- Clarified appointment methods, terms and qualifications for Commissioners.

#### FISCAL CONSIDERATIONS:

No costs will be incurred by approval of the proposed amendments. However, it is anticipated that the amendments may lead to improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets.

#### PREVIOUS COUNCIL and/or COMMITTEE ACTION:

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#### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 18, 2008, the Commission voted to recommend to the Mayor and City Council approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On April 7, 2008, the Policy Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On May 3, 2007, the Public Art Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

In addition, the research and development of the proposed amendments engaged the following individuals, groups and organizations:

- Deputy Chief of Community and Legislative Services
- City Attorney's staff
- Director, Major Gifts and Philanthropy Planning
- Executive Director, Commission for Arts and Culture and staff
- Visual Arts Librarian and Manager of the Library Department's Visual Arts Program
- Grants & Gifts Business Process Reengineering (BPR) Team
- Ethics Commission staff
- Purchasing and Contracting Department staff
- Other municipal governments nationwide
- National Public Art Network of Americans for the Arts

#### KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the Commission, the Executive Director and Commission staff as well as elected officials, City staff and San Diego's citizenry. Projected impacts may include improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets. Increased labor associated with educating City staff about any new or amended duties and functions assigned to the Commission, the Executive Director and Commission staff may be possible.



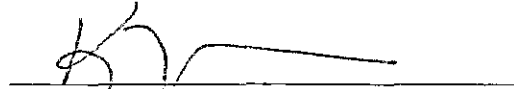
The City's requirements, adopted in 2004, for the inclusion of art and/or cultural space in eligible private developments are not materially changed by these proposed amendments.

None of the proposed amendments shall be construed to limit or abridge the powers or exclusive jurisdiction of the City's Library Department over its Visual Arts Program.

Respectfully submitted,



Victoria L. Hamilton  
Executive Director  
Commission for Arts and Culture



Kris Michell  
Deputy Chief for Community and Legislative Services  
Community and Legislative Services

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**Article 6: Board and Commissions**  
**Division 7: Commission for Arts and Culture**  
*("Commission for Arts and Culture"*  
*added 5-15-1989 by O-17298 N.S.)*

**§26.0701 Purpose and Intent**

It is the purpose and intent of the Mayor and City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor and City Council on promoting, encouraging, and increasing support for the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

It is also the purpose and intent of the Mayor and City Council to establish staff to: support the Commission for Arts and Culture; to develop, administer, evaluate and/or recommend changes to public policy, legislation, and advocacy strategies; to facilitate partnerships; to administer funding in support of non-profit arts and culture organizations, artists, neighborhood arts programs, festivals, artworks in public and private development; to manage artworks owned and controlled by the City of San Diego (City); to support cultural tourism and innovative arts and culture programming; and to undertake other initiatives that contribute to the quality of life, the economic vitality, and the vibrancy of San Diego.

*(Amended 4-20-1992, by O-17757 N.S.)*

*(Amended 5-17-2004, by O-19280 N.S.)*

**§26.0702 Definitions**

Except as otherwise provided, the following definitions apply to the terms italicized in this division:

*Applicant* has the same meaning as stated in Land Development Code Ssection 113.0103.

*Accession* means the formal process used to accept and record an *artwork* as a *Civic Art Collection* item.

*Acquisition* means the transfer of title to the City of valuable property including *artwork* by purchase, donation, bequest, transfer or exchange. *Acquisitioned artworks* are *accessioned* into the *Civic Art Collection*.

*Artist* means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or language arts, or a combination thereof, based on that professional practitioner's body of

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work, educational background, experience, past commissions, exhibition/performance record, publications, and production of *artworks*.

*Artwork* must be specified or designed by an *artist* and includes:

*Public art* as defined herein;

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported, suspended, mounted, installed, kinetic, electronic or mechanical; ;

Murals or paintings: may be made of any material or combination of materials; may be made with traditional or non-traditional means;

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, linguistic expressions, calligraphy, ephemera, textiles, found objects, and any-media or combination of media; including audio, video, film, holographic or computer generated technologies, or other art genres currently known or which may come to be known; and

Tangible manifestations (i.e., CDs, DVDs, scripts, photographs, videos, films, scores, etc.) of choreography, theatrical performances, performance art, happenings, music, television and film or other performing or language art genres currently known or which may come to be known.

*Artworks* may be permanent, temporary, fixed, or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

**The following, unless specified or designed by an *artist*, are not considered *artworks*:**

Reproductions, by mechanical or other means, of original *artworks*. However, limited editions controlled by the *artist* or original prints, cast sculptures, or photographs, may be considered *artworks*.

Decorative, ornamental or functional elements not specified or designed by an *artist*.

Elements generally considered as being components of architecture or landscape design such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc.

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Art objects which are mass produced, ordered from a catalog, or of standard design (such as benches or fountains); wayfinding or other functional elements such as graphics, signage, advertising or maps.

*Capital Improvements Program project* means any permanent public improvement project or portion or phase thereof set forth in the Capital Improvements Program as adopted by the Mayor and City Council.

*Civic Art Collection* means *artworks* which have been *accessioned* and are publicly owned, possessed, or controlled by the City and administered by the *Commission*. Incoming loans of *artwork* shall be incorporated into the *Civic Art Collection* for the duration of the loan but are not considered *acquisitions*.

*Civic Enhancement allocation* means the percentage of the *total building permit valuation* for a qualifying *development* in accordance with the requirements set forth herein which is set aside for *artwork* on the *premises*, venues for *cultural use* on the *premises* and/or an in-lieu contribution to the *Public Art Fund*.

*Collections management activities* include, but are not limited to, the *acquisition*, incoming loan, outgoing loan, interdepartmental loan, *deaccession*, *disposal*, relocation, removal, exhibition, operation, maintenance, conservation, documentation, storage, reproduction and/or adaptation of *artworks*.

*Commission* means the City of San Diego Commission for Arts and Culture.

*Cultural use* means *open and accessible* programming for the presentation of visual, performing and/or language arts.

*Deaccession* means the formal process used to permanently remove an *artwork* from the *Civic Art Collection*.

*Development* has the same meaning as stated in Land Development Code Ssection 113.0103.

*Disposal* means the permanent exchange, sale, destruction or transfer of an *artwork* in the *Civic Art Collection*.

*Extraordinary artwork maintenance* means any maintenance or conservation to the sound condition of an *artwork* that requires specialized services.

*Open and accessible* means available for use by the general public

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during normal hours of business operation consistent with the operation and use of the *premises*.

*Ordinary artwork maintenance* means the routine oversight of the operation and cleaning of and around *artworks* performed.

*Premises* has the same meaning as stated in Land Development Code Ssection 13.0103.

*Public art* means *artwork* acquired or created using funds appropriated by the City and located in *public places*.

*Public Aert Fund* means a separate fund established in the City Treasury into which *Civic Enhancement allocations*; funding for *collections management activities*; funding for *public art project management activities*; monetary bequests and donations for specific or unspecified *cultural use*; grants; and Citywide Transient Occupancy Tax (TOT) Revenue may be deposited.

*Public art project management activities* include, but are not limited to, *artist selection process activities*, payment of stipends to *artists* and consultant fees, community participation activities, outreach and educational activities, and implementation of communication tools such as interpretive plaques, project documentation, and staff administration of all of the above.

*Public places* means land and buildings owned or controlled by the City of San Diego.

*Redevelopment Project Area* means any *Redevelopment Project Area* formally adopted by the City Council of San Diego pursuant to Community Redevelopment Law, California Health and Safety Code Sections 33000 et. seq., maps of which are on file in the Office of the City Clerk.

*Redevelopment Agency project* means any undertaking of the City of San Diego Redevelopment Agency in a *Redevelopment Project Area* pursuant to the authority vested in the Agency under California Health and Safety Code Sections 33000 et. seq.

*Total building permit valuation* means the combined total valuation of all new structures, including tenant improvements within those new structures, within the *premises*, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

(Amended 4-10-2000, by O-18786 N.S.)

(Renumbered 5-17-2004, by O-19280 N.S.)

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**§26.0703 Commission for Arts and Culture Established**

There is hereby established a Commission for Arts and Culture consisting of fifteen members, who shall serve without compensation. The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven members; and, 2) the Mayor shall appoint the remaining eight members, one each from a list of three nominations submitted by each Councilmember.

(Amended 4-20-1992, by O-17757 N.S.)

(Renumbered 5-17-2004, by O-19280 N.S.)

**§26.0704 Duties and Functions – Commission for Arts and Culture**

The *Commission* shall:

- (a) Advocate for the role and value of arts and culture in civic life.
- (b) Promote greater public participation in, and access to, arts and culture.
- (c) Evaluate the City's allocation of Citywide TOT Revenue for arts and culture and strongly advocate for increasing arts and culture funding to levels which measurably support the vitality and stability of established arts and cultural organizations and which foster an environment attractive to and nurturing of emerging arts and cultural organizations.
- (d) Advocate for and explore alternate sources of arts and culture funding including, but not limited to, grants, donations and corporate sponsorships.
- (e) Advise on the development, implementation, evaluation and/or change of the City's arts and culture public policy, legislation, programs and services.
- (f) Advocate for City public policy, legislation, programs and services that foster a wide range of arts and cultural offerings which engage a diverse public audience.
- (g) Review the annual proposed budget for the *Commission* as prepared by the Executive Director of the *Commission* and provide recommendations, as appropriate.
- (h) Advise on the administration of the budget for the *Commission*, and the arts and culture allocations within the Citywide TOT

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Revenue including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.

- (i) Oversee and, when appropriate, participate in an open and impartial process for evaluating TOT funding applications from local, non-profit arts and culture organizations.
- (j) Recommend to the Mayor and City Council the fair distribution of TOT funds to non-profit arts and culture organizations to support local arts and culture programming.
- (k) Advise on all *collections management activities* and *public art project management activities* pertaining to existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (l) Advise on the administration of the *Public Art Fund*.
- (m) Advise on the inclusion of *artworks* in *Capital Improvements Program projects* and *Redevelopment Agency projects* and ensure that *artists* are involved as early as possible in the pre-design or design phases for each project.
- (n) Advocate for the fair distribution of arts and culture amenities across each City Council district and throughout San Diego's neighborhoods.
- (o) Participate in the initiation, implementation and/or sponsorship, alone or in partnership with other public agencies or private organizations, programs and services to support local arts and culture organizations and individual *artists*.
- (p) Consistent with City Council policy, serve as the City's advocates for arts and culture within the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and other Pacific Rim countries.
- (q) Advise on other arts and culture issues as directed by the Mayor or City Council.
- (r) Hold regular public meetings and keep written records of the proceedings which shall be public records.
- (s) Adopt rules consistent with laws for the government of its business and procedures.

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(Renumbered 5-17-2004, by O-19280 N.S.)

**§26.0705 Qualification of Commission Members**

*Commission* members, or Commissioners, shall be persons who represent individual arts and culture patrons, *artists*, educators, the business and professional community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public. Efforts should be made to include Commissioners who represent a diversity of backgrounds including, but not limited to, gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, political persuasion, professional background, and/or capacity to provide other tangible and intangible resources. Commissioners also shall be persons who will commit to volunteering time to serve on the board which meets monthly, as well as on at least one *Commission* committee and one *Commission* review panel on an annual basis.

Board Chairs, Presidents, or other officers of the board of directors of an organization funded by the *Commission* may not be considered for an appointment to the *Commission* or accept such a position while a Commissioner. A senior, full-time employee of an organization funded by the *Commission* may not be considered for appointment to the *Commission* or accept such a position while a Commissioner. In selecting *Commission* members, the Mayor or the Mayor's designee shall consider whether candidates would be able to effectively and ethically serve in light of any foreseeable conflicts of interest.

**§26.0706 Designation of Commission Chair and Vice Chair**

The Mayor may designate one member as Chair in September of each year in which a Chair is to be selected; however, in the absence of such designation, the *Commission* shall on or after October 15 of such year select from their members a Chair. The Chair shall take office no earlier than October and no later than December. The Vice Chair shall be nominated by the Chair and elected by a majority vote of the *Commission*.

**§26.0707 Commissioner Terms**

Commissioners shall serve two year staggered terms for a maximum of eight consecutive years and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before an individual can be reappointed.

The expiration date of all terms shall be August 31.



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The Chair shall serve a term of two years and can be designated as Chair by the Mayor for one additional year.

The Vice Chair shall serve a term of one year and can be reelected as Vice Chair by the *Commission* for two additional one year terms.

**§26.0708 Commission Meetings and Reporting**

The *Commission* shall meet not less than monthly and report to the Mayor and City Council on an as needed basis, but not less than one time per year.

**§26.0709 Resignation and Removal of Commissioners**

Any Commissioner may submit written resignation to the Chair. The Commissioner resigning must file a Leaving Office Statement with the City Clerk within thirty days of the effective date of resignation. It is the Chair's responsibility to notify the Mayor of any such resignation.

The *Commission* may recommend to the Mayor that an individual Commissioner be removed for sufficient cause.

**§26.0710 Commission Quorum**

Eight (8) Commissioners shall constitute a quorum authorized to transact business.

**§26.0711 Commission Conflict of Interest Code**

A conflict of interest code shall be adopted for Commissioners, subject to City Council approval pursuant to Chapter 2, Article 6, Division 1 of this Code. All Commissioners shall be required to complete and file statement of economic interests in accordance with the conflict of interest code, and shall comply with all applicable ethics laws.

**§26.0712 Staff of the Commission for Arts and Culture Established**

There is hereby established staff of the *Commission* under the direction of the Mayor. The Commission staff shall consist of a full-time Executive Director, professional arts administrators and support staff.

**§26.0713 Duties and Functions – Staff of the Commission for Arts and Culture**

Staff of the *Commission* shall:

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- (a) Develop, implement, evaluate and/or recommend changes to public policy, legislation, programs and services that support the *Commission's* purpose, duties and functions.
- (b) Provide administrative support for the *Commission* in the fulfillment of its purpose, duties and functions.
- (c) Develop, implement, evaluate and/or recommend changes to public policy, legislation, programs and services pertaining to the *Commission* staff and its purpose, duties and functions.
- (d) Administer the budget of the *Commission* as directed by the Executive Director.
- (e) Administer the arts and culture allocations within the Citywide TOT Revenue including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category as directed by the Executive Director.
- (f) Administer an open and impartial process for the allocation of TOT funds to local, non-profit arts and culture organizations.
- (g) Evaluate the process for the allocation of TOT funds to local, non-profit arts and culture organizations, and recommend changes, as appropriate.
- (h) Administer the fair distribution of TOT funds, as approved by the Mayor and City Council and as directed by the Executive Director, to non-profit arts and culture organizations to support local arts and culture programming.
- (i) Perform all *collections management activities* and *public art project management activities* pertaining to existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (j) Administer the policies and processes whereby *artworks* are included in *Capital Improvement Program projects* and *Redevelopment Agency projects* and ensure that *artists* are involved as early as possible in the pre-design or design phases for each project.
- (k) Develop and administer open processes for the fair distribution of arts and culture amenities across each City Council District and throughout San Diego's neighborhoods.

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- (l) Initiate, conduct and/or sponsor, alone or in partnership with other public agencies or private organizations, programs and services to support local arts and culture organizations and individual *artists*.
- (m) Serve as the Federal/State/Local arts and culture program partner.
- (n) Administer programs and services related to arts and culture as directed by the Mayor.

**§26.0714 Appointment and Removal of Executive Director**

The Executive Director of the *Commission*, shall be appointed by the Mayor, and may be removed by the Mayor as provided in Section 29 of the City Charter.

**§26.0715 Duties and Functions – Executive Director**

The Executive Director shall:

- (a) Serve as the head of and be responsible for the administration of the *Commission*, *Commission* staff, and their respective purposes, duties and functions.
- (b) Consistent with applicable laws and policies, appoint, assign, supervise and remove all City employees on the *Commission* staff.
- (c) Consistent with applicable laws and policies, initiate, administer, propose modifications and enforce such agreements and instruments as the Executive Director deems reasonably necessary to implement public policy, legislation, programs and services pertaining to the *Commission*, *Commission* staff, and their respective purposes, duties and functions.
- (d) Prepare the annual proposed budget for the *Commission* and provide recommendations, as appropriate, to the *Commission* before submitting budget recommendations to the Mayor.
- (e) Direct the administration of the budget for the *Commission* and the arts and culture allocations within the Citywide TOT Revenue including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.
- (f) Direct the fair distribution of TOT funds, as approved by the Mayor and City Council, to non-profit arts and culture organizations to support local arts and culture programming.

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- (g) Serve as the steward of the *Civic Art Collection* and manage any financial transactions related to *collections management activities* and *public art project management activities* pertaining to all existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (h) Administer the *Public Art Fund*.
- (i) Consistent with applicable laws and policies, initiate agreements to provide professional arts administration services to other agencies, corporations and companies.
- (j) Consistent with applicable laws and policies, prepare and submit reports to the Mayor and City Council pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (k) Consult with and submit reports to the *Commission* pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (l) Manage other duties pertaining to arts and culture as assigned by the Mayor.

§26.0716

**Civic Enhancement Allocation Regulations and Calculations**

- (a) To ensure that the City's increasing urbanization is offset by the creation of *artworks* and venues dedicated to *cultural use*, no final City approval to occupy any private industrial or commercial *development*, or any portion thereof, with a *total building permit valuation* greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless a *Civic Enhancement allocation* in an amount equal to one percent (when the *applicant* elects to meet the requirements of this Section pursuant to Subdivision (b.1) or (b.2)) or one-half of one percent (when the *applicant* elects to meet the requirements of this Section pursuant to Subdivision (b.3)) of its *total building permit valuation* has been set aside by the *applicant*, subject to the provisions of Section 26.0718.
  - (1) For phased *development*, calculation of *total building permit valuation* will be based on the total number of building permits applied for, but not yet issued, for the

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premises, but does not include any withdrawn permit applications.

- (2) The valuation of any exempt component of a mixed use *development* shall be deducted from the combined *total building permit valuation*.
  - (3) The calculation of *total building permit valuation* shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire rated occupancy classification.
- (b) The *Civic Enhancement allocation* may be used by the *applicant* to comply with the requirements set forth herein through one of the following means:
- (1) Placement of *artworks* valuing one percent of the *total building permit valuation* for the *development* on the *premises*. If the value of the *artwork*, including art consultant fees and the costs for design, fabrication, installation, and documentation, is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *artwork*.
  - (2) Maintaining a portion of the *premises* which is *open and accessible* for *cultural use*. If the value of that portion of the *premises* which is *open and accessible* for *cultural use* is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *premises* which is *open and accessible* for *cultural use*.
  - (3d) Depositing into the *Public Art Fund*, payment of an in-lieu fee equal to one-half of one percent of the *total building permit valuation* for the *development*.

#### §26.0717 Civic Enhancement Allocation Declaration

Upon applying for a building permit, the *applicant* shall:

- (a) Declare in writing the means by which the *applicant* will comply with the requirements of Section 26.0716 (b); and

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- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0719.

**§26.0718 Compliance with Civic Enhancement Allocation Regulations**

- (a) If the *applicant* chooses to pay an in-lieu fee in accordance with the provisions of Section 26.0716 (b.3.), no building permit for the *development* may be issued without payment of the in lieu fee to the City of San Diego's *Public Art Fund*.
- (b) If the *applicant* chooses to install an *artwork* on the *premises* or maintains a portion of the *premises open and accessible* for a *cultural use* in accordance with the requirements of Section 26.0716 (b.1.) or (b.2.), no building permit for the *development* may be issued until the *applicant* deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the Mayor and City Attorney in an amount equal to one-half of one percent of the *total building permit valuation*. Any costs associated with acquiring the required security are the responsibility of the *applicant*, and may not be applied to the *Civic Enhancement allocation*.
- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit to *Commission* staff evidence, satisfactory to the Executive Director of the *Commission*, that:
- (1) If applicable, the value of the *artwork* installed on the *premises* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include the costs of art consultant fees, *artist* design fees, fabrication of the *artwork*, installation of the *artwork*, and/or documentation of the *artwork*.
- (2) If applicable, the value of the portion of the *premises* which is maintained *open and accessible* for *cultural use* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the *development*.

**§26.0719 Declaration of Covenants, Conditions, and Restrictions for Developments Subject to the Civic Enhancement Allocation Regulations**

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If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and accessible for cultural use* in accordance with the requirements of Section 26.0716 (b.1.) or (b.2.), the *development* shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the *development* shall provide all necessary maintenance of the *artwork*, including preservation of the *artwork* in good condition to the reasonable satisfaction of the City and protection of the *artwork* against destruction, distortion, mutilation, or other modification. The owner of the *premises* may retain ten percent of the *Civic Enhancement allocation* in order to fund the costs of conservation, ongoing maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements set forth herein.
- (b) The owner of the *development* shall ensure that the *artwork* will be located in an area that is *open and accessible*.
- (c) A description of that portion of the *premises* which will be maintained *open and accessible* and its designated *cultural use*.
- (d) Any other reasonable terms necessary to implement the provisions set forth herein.

## §26.0720

**Return of Civic Enhancement Allocations**

- (a) *Civic Enhancement allocations* paid into the City of San Diego's *Public Art Fund* which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the *Civic Enhancement allocations* is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the *development* for which the *Civic Enhancement allocation* was paid, and a statement that the person making the request paid the *Civic Enhancement allocation* or is the current owner of the *development*.
- (b) The City Council shall determine if return of the then unexpended portion of the *Civic Enhancement allocation* and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:

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- (1) The City Council finds that the funds are needed for *artwork or cultural use*.
- (2) The *Civic Enhancement allocations* were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.
- (3) The administrative cost of refunding unexpended *Civic Enhancement allocations* in accordance with the requirements of Section 26.0720 (a) exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the *development* in not less than three places.

**§26.0721 Failure to Maintain Artwork Created Through Civic Enhancement Allocations**

Failure to maintain *artworks* created through *Civic Enhancement allocations* is declared to be a public nuisance.

**§26.0722 Civic Enhancement Allocation Appeal**

Any *applicant* may seek review of a decision by the Executive Director of the *Commission* under Section 26.0718 (c) by filing an application for an appeal hearing with the Executive Director of the *Commission* no later than ten business days after the Executive Director's decision.

The Executive Director of the *Commission* shall coordinate a date for an appeal hearing before the Mayor or the Mayor's designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Executive Director. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The certificate of occupancy may be withheld pending resolution of the appeal.

At the conclusion of the appeal hearing, the Mayor or the Mayor's designee may affirm, reverse, or modify the Executive Director's decision. The decision of the Mayor is final.

**§26.0723 Civic Enhancement Allocation Exemptions**

The *Civic Enhancement allocation* requirements do not apply to the following:

- (a) Industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000 or current threshold pursuant to Section 26.0716.



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- (b) Any *premises* which has an institutional use, such as churches, hospitals, and schools.
- (c) Any *premises* which is used solely for residential *development*.
- (d) Any *premises* which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.
- (e) Industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to national security reasons.
- (f) Industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

**§26.0724 Control of Artworks**

No *artworks* shall be contracted for, exhibited on, or erected on *public places*, or become the property of the City by *acquisition* or otherwise, or be in the custody of the City by loan or otherwise, unless such *artworks*, shall first have been submitted to and accepted by the *Commission* staff, and following review and recommendation by the *Commission*. No existing *artworks* owned by or in the custody of the City shall be *deaccessioned*, removed, relocated, conserved, altered, exhibited or *disposed* of in any way without the approval of *Commission* staff, and following review and recommendation by the *Commission*.

**§26.0725 Management of Artworks**

All *collections management activities* shall be the responsibility of the *Commission* staff, and undertaken with the advice of the *Commission*. Ordinary *artwork maintenance* of *artworks* in the *Civic Art Collection* is the responsibility of the City department at which the *artwork* is sited and shall be undertaken at the direction of *Commission* staff.

**§26.0726 Acquisition of Artworks**

- (a) Consistent with applicable laws and policies, *Commission* staff may authorize the purchase of *artworks* for inclusion in the *Civic Art Collection* following the review and recommendation of the *Commission*.

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- (b) Consistent with applicable laws and policies, *Commission* staff shall, on behalf of the City, accept, with or without conditions; or reject donations, bequests or incoming loans of *artwork* following the review and recommendation of the *Commission*. Title to all donated and bequeathed *artworks* accepted by the City and *accessioned* into the *Civic Art Collection* shall be vested and held in the name of the City.

**§26.0727 Deaccession and Disposal of Artworks**

- (a) Consistent with applicable laws and policies, *Commission* staff shall *deaccession* and *dispose* of *artworks* from the *Civic Art Collection*, following the review and recommendation of the *Commission*.
- (b) When an *artwork* to be *deaccessioned* and *disposed* of through sale has an estimated fair market value of \$250,000 or more, *Commission* staff shall submit a report on the recommendation for the sale to the Mayor and City Council prior to initiating the sale.
- (c) When an *artwork* is *deaccessioned* and *disposed* of through sale, the *artwork* shall be sold through methods either administered by or approved by the Purchasing Agent consistent with applicable laws and policies. When an *artwork* is *deaccessioned* and *disposed* of through sale or exchange, the Executive Director, consistent with applicable laws and policies, may administer acceptance of all deeds of conveyance necessary and proper to affect a duly authorized sale or exchange.

**§26.0728 Loans from the Civic Art Collection**

Commission staff is authorized to loan *artworks* from the *Civic Art Collection* to City departments, agencies, institutions, organizations or galleries. Loans are made according to the terms and conditions of loan agreements.

**§26.0729 Reproductions or Adaptations of Artworks**

Commission staff is authorized to negotiate with the copyright holder for each *artwork* in or proposed for inclusion in the *Civic Art Collection* for the purpose of acquiring a license to make, or cause to be made reproductions or adaptations of *artworks*. Reproductions or adaptations of artworks are made according to the terms and conditions of the licensing agreement.

**§26.0730 Proceeds from the Sale, Loan, Reproduction or Adaptation of Artworks**

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All monies received from the sale of *artworks* from the *Civic Art Collection* must be expended on new *acquisitions* for the *Civic Art Collection*. Proceeds from the loan of *artworks* from the *Civic Art Collection* or from the licensing of the making of reproductions or adaptations thereof, less any payments due, shall be deposited into the *Public Art Fund*.

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**Article 6: Board and Commissions**  
**Division 7: Commission for Arts and Culture**  
*("Commission for Arts and Culture"*  
*added 5-15-1989 by O-17298 N.S.)*

**§26.0701 Purpose and Intent**

It is the purpose and intent of the Mayor and City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor, and City Council and City Manager on promoting, encouraging, and increasing support for arts and culture, the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

It is also the purpose and intent of the Mayor and City Council to ~~encourage the preservation and augmentation of the City of San Diego's cultural and artistic resources, and to ensure that the City's increasing urbanization is offset by the creation of artworks and venues dedicated to artistic performances, exhibitions, and cultural events.~~ establish staff to: support the Commission for Arts and Culture; to develop, administer, evaluate and/or recommend changes to public policy, legislation, and advocacy strategies; to facilitate partnerships; to administer funding in support of non-profit arts and culture organizations, artists, neighborhood arts programs, festivals, artworks in public and private development; to manage artworks owned and controlled by the City of San Diego (City); to support cultural tourism and innovative arts and culture programming; and to undertake other initiatives that contribute to the quality of life, the economic vitality, and the vibrancy of San Diego.

*(Amended 4-20-1992, by O-17757 N.S.)*

*(Amended 5-17-2004, by O-19280 N.S.)*

**§26.0702 Definitions**

Except as otherwise provided, the following definitions apply to the terms italicized in for the purposes of this division:

Applicant has the same meaning as stated in Land Development Code Ssection 113.0103.

Accession means the formal process used to accept and record an artwork as a Civic Art Collection item.

Acquisition means the transfer of title to the City of valuable property including artwork by purchase, donation, bequest, transfer or exchange. Acquisitioned artworks are accessioned into the Civic Art Collection.

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*Artist* means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or language literary arts, or a combination thereof, based on as judged by the quality of that professional practitioner's body of work, educational background, experience, ~~public—performances,~~ past ~~public—commissions,~~ exhibition/performance record, publications, and production of artworks.

Artwork must be specified or designed by an *artist* and includes:

*Public art* as defined herein;

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported, or suspended, mounted, installed, kinetic, electronic or mechanical.

Murals or paintings: may be made of any material or variety combination of materials, with or without collage; may be made with traditional or non-traditional materials and means.

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary linguistic expressions, calligraphy, ephemera, textiles, found objects, and any combination of forms of media or combination of media, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies, or other art new-genres currently known or which may come to be known; and

Tangible manifestations (i.e., CDs, DVDs, scripts, photographs, videos, films, scores, etc.) of choreography, theatrical performances, performance art, happenings, music, television and film or other performing or language art genres currently known or which may come to be known.

Artworks as defined herein may be permanent, temporary, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

The following, unless specified or designed by an *artist*, are not considered *artworks*:

Reproductions, by mechanical or other means, of original artworks. However, limited editions controlled by the *artist* or original prints, cast sculptures, or photographs, may be considered artworks.

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Decorative, ornamental or functional elements not specified or designed by an artist.

Elements generally considered as being components of architecture or landscape design such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc.

Art objects which are mass produced, ordered from a catalog, or of standard design (such as benches or fountains); wayfinding or other functional elements such as graphics, signage, advertising or maps.

Capital Improvements Program project means any permanent public improvement project or portion or phase thereof set forth in the Capital Improvements Program as adopted by the Mayor and City Council, paid for wholly by monies appropriated by the City to construct, improve, or renovate a building, including its appurtenant facilities, a decorative or commemorative structure, a park, a sidewalk, a parking facility, a utility, or any portion thereof, within the City limits or under the jurisdiction of the City.

Civic Art Collection means artworks which have been accessioned and are publicly owned, possessed, or controlled by the City and administered by the Commission. Incoming loans of artwork shall be incorporated into the Civic Art Collection for the duration of the loan but are not considered acquisitions.

Civic Enhancement Public art program allocation means the percentage of the total building permit valuation for a qualifying development in accordance with the requirements set forth herein Chapter 2, Article 6, Division 7 which is set aside for the City's public art program artwork on the premises, venues for cultural use on the premises and/or an in-lieu contribution to the Public Art Fund.

Collections management activities include, but are not limited to, the acquisition, incoming loan, outgoing loan, interdepartmental loan, deaccession, disposal, relocation, removal, exhibition, operation, maintenance, conservation, documentation, storage, reproduction and/or adaptation of artworks.

Commission means the City of San Diego Commission for Arts and Culture.

Cultural use means open and accessible programming for the presentation of visual, performing and/or language arts, includes individual and group presentations, exhibitions, or public performances involving music, dance, theatre, opera, literature, sculpture, murals, paintings, earthworks,

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mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies.

Deaccession means the formal process used to permanently remove an artwork from the *Civic Art Collection*.

Development has the same meaning as stated in Land Development Code Ssection 113.0103.

Disposal means the permanent exchange, sale, destruction or transfer of an artwork in the *Civic Art Collection*.

Extraordinary artwork maintenance means any maintenance or conservation to the sound condition of an artwork that requires specialized services.

Open and freely-accessible, means available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.

Ordinary artwork maintenance means the routine oversight of the operation and cleaning of and around artworks performed.

Premises has the same meaning as stated in Land Development Code Ssection 13.0103.

Public art means artwork that is acquired or created using funds appropriated by the City from the *public art fund* and is located in public places.

Public Art Fund means a separate fund established in the City Treasury into which *Civic Enhancement allocations; funding for collections management activities; funding for public art project management activities; monetary bequests and donations for specific or unspecified cultural use; grants; and Citywide Transient Occupancy Tax (TOT) Revenue funds allocated in accordance with Chapter 2, Article 6, Division 7 shall may be deposited.*

Public art project management activities include, but are not limited to, *artist selection process activities, payment of stipends to artists and consultant fees, community participation activities, outreach and educational activities, and implementation of communication tools such as interpretive plaques, project documentation, and staff administration of all of the above.*

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~~Public art program~~ includes all responsibilities and activities of the ~~Commission~~ in accordance with Chapter 2, Article 6, Division 7 pertaining to ~~public art~~.

~~Public performances~~ includes individual and group presentations of music, dance, theatre, opera, literary, film/video and other forms of art generally recognized.

~~Public places~~ means land and buildings owned or controlled by the City of San Diego.

Redevelopment Project Area means any Redevelopment Project Area formally adopted by the City Council of San Diego pursuant to Community Redevelopment Law, California Health and Safety Code Sections 33000 et. seq., maps of which are on file in the Office of the City Clerk.

Redevelopment Agency project means any undertaking of the City of San Diego Redevelopment Agency in a Redevelopment Project Area pursuant to the authority vested in the Agency under California Health and Safety Code Sections 33000 et. seq.

Total building permit valuation means the combined total valuation of all new structures, including tenant improvements within those new structures, within the premises, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

(Amended 4-10-2000, by O-18786 N.S.)

(Renumbered 5-17-2004, by O-19280 N.S.)

§26.0703

### **Commission for Arts and Culture Established**

There is hereby established a Commission for Arts and Culture consisting of fifteen members, who shall serve without compensation. The Commission members shall be persons who represent the follow: individual artists, arts and culture patrons, educators, the business community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public. The members shall serve two year staggered terms for a maximum of eight consecutive years, and each member shall serve until a successor of is duly appointed and confirmed. An interval of four years must pass before such persons may be reappointed. appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven members; and, 2) the Mayor shall appoint the remaining eight members, one each from a list of three nominations submitted by each Councilmember. The expiration date of all terms shall be August 31. During September of each year, the Mayor may designate



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one member as chairperson; however, in the absence of such designation, the Commission shall on or after October 15 select from their members a chairperson. The Commission shall meet not less than monthly and report to the Mayor and Council on an as needed basis, but not less than one time per year.

The Commission shall adopt rules consistent with laws for the government of its business and procedures

(Amended 4-20-1992, by O-17757 N.S.)

(Renumbered 5-17-2004, by O-19280 N.S.)

§26.0704

**Duties and Functions – Commission for Arts and Culture**

The Commission shall:

- (a) Advocate for the role and value of arts and culture in civic life. Strongly advocate a substantial increase in funds for arts and culture.
- (b) Promote greater public participation in, and access to, arts and culture. Make all funding recommendations directly to the Mayor, City Council and City Manager.
- (c) Evaluate the City's allocation of Citywide TOT Revenue for arts and culture and strongly advocate for increasing arts and culture funding to levels which measurably support the vitality and stability of established arts and cultural organizations and which foster an environment attractive to and nurturing of emerging arts and cultural organizations. Explore new sources of funding for arts and culture and evaluate the current allocation of Transient Occupancy Tax funding as it pertains to arts and culture.
- (d) Advocate for and explore alternate sources of arts and culture funding including, but not limited to, grants, donations and corporate sponsorships. Develop, coordinate and regularly reevaluate the City's arts and culture policies.
- (e) Advise on the development, implementation, evaluation and/or change of the City's arts and culture public policy, legislation, programs and services. Consistent with City Council policy, serve as advocates for arts and culture with the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and Pacific Rim countries.
- (f) Advocate for City public policy, legislation, programs and services that foster a wide range of arts and cultural offerings which engage

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~~a diverse public audience. Serve as the State/Federal local arts program partner.~~

- (g) Review the annual proposed budget for the Commission as prepared by the Executive Director of the Commission and provide recommendations, as appropriate. Manage the City's public art program, which shall include the following:

(1) ~~Advising on the acquisition, placement and maintenance of public art on property of the City of San Diego. No public art shall be installed or existing work of public art removed from public places without a review by the Commission.~~

(2) ~~Developing and recommending to the Mayor, City Council and City Manager as appropriate:~~

(A) ~~Programs to promote public performances and the public exhibition of the visual, performing, and literary arts.~~

(B) ~~Legislation to provide opportunities for inclusion of the visual, performing, and literary arts in private development.~~

(C) ~~Legislation and policies to include public art in selected Capital Improvements Program projects.~~

- (h) Advise on the administration of the budget for the Commission, and the arts and culture allocations within the Citywide TOT Revenue including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category. Receive and accept applications for TOT funding, and using objective criteria evaluate the applications and recommend to the Mayor, City Council and City Manager the allocation of that funding.

- (i) Oversee and, when appropriate, participate in an open and impartial process for evaluating TOT funding applications from local, non-profit arts and culture organizations. Recommend for the City Manager's review a budget for funding arts and culture programs in the City.

- (j) Recommend to the Mayor and City Council the fair distribution of TOT funds to non-profit arts and culture organizations to support local arts and culture programming. Establish guidelines to carry

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out the public art program which shall include methods of selection artists or public art and for the placement of public art.

- (k) Advise on all collections management activities and public art project management activities pertaining to existing and proposed artworks in/proposed for the Civic Art Collection, or contracted for, exhibited on, or erected on public places. Advise the City Council regarding the possible purchase of public art or commissioning the design, execution or placement of public art. The Commission shall work with the City Manager regarding the design, execution or placement of public art in connection with Capital Improvements Program projects.
- (l) Advise on the administration of the Public Art Fund. In the placement of public art in the City, give special attention to the placement of appropriate public art in City neighborhoods.
- (m) Advise on the inclusion of artworks in Capital Improvements Program projects and Redevelopment Agency projects and ensure that artists are involved as early as possible in the pre-design or design phases for each project. Receive input from the City Manager regarding operation and maintenance expenses associated with a work of public art. If the City Manager finds that a proposed work of public art requires extraordinary operation or maintenance expenses, the Commission shall recommend another work of public art, or submit with its recommendation to the City Manager and City Council a statement of overriding consideration of why the public art should be utilized notwithstanding its extraordinary operation or maintenance expense.
- (n) Advocate for the fair distribution of arts and culture amenities across each City Council district and throughout San Diego's neighborhoods. In cooperation with the City Manager, establish and adopt policies and procedures to implement the requirements of Chapter 2, Article 6, Division 7.
- (o) Participate in the initiation, implementation and/or sponsorship, alone or in partnership with other public agencies or private organizations, programs and services to support local arts and culture organizations and individual artists. Where a work of public art is to be included in the construction of a Capital Improvements Program project, facilitate cooperation and early project coordination between City staff and artists.
- (p) Consistent with City Council policy, serve as the City's advocates for arts and culture within the City Council, as well as the private sector, local, regional, state and federal governments, and

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international entities, such as Mexico, Canada, Japan and other Pacific Rim countries.

(q) Advise on other arts and culture issues as directed by the Mayor or City Council.

(r) Hold regular public meetings and keep written records of the proceedings which shall be public records.

(s) Adopt rules consistent with laws for the government of its business and procedures.

*(Renumbered 5-17-2004, by O-19280 N.S.)*

§26.0705

### Qualification of Commission Members

Commission members, or Commissioners, shall be persons who represent individual arts and culture patrons, artists, educators, the business and professional community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public. Efforts should be made to include Commissioners who represent a diversity of backgrounds including, but not limited to, gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, political persuasion, professional background, and/or capacity to provide other tangible and intangible resources. Commissioners also shall be persons who will commit to volunteering time to serve on the board which meets monthly, as well as on at least one Commission committee and one Commission review panel on an annual basis.

Board Chairs, Presidents, or other officers of the board of directors of an organization funded by the Commission may not be considered for an appointment to the Commission or accept such a position while a Commissioner. A senior, full time employee of an organization funded by the Commission may not be considered for appointment to the Commission or accept such a position while a Commissioner. In selecting Commission members, the Mayor or the Mayor's designee shall consider whether candidates would be able to effectively and ethically serve in light of any foreseeable conflicts of interest.

#### Exemptions

The requirements of Chapter 2, Article 6, Division 7 do not apply to the following:

(a) Industrial and commercial development with a total building permit valuation of less than \$5,000,000.

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- ~~(b) Any premises which has an institutional use, such as churches, hospitals, and schools.~~
  - ~~(c) Any premises which is used solely for residential development.~~
  - ~~(d) Any premises which is owned or leased solely by a non profit entity and used in furtherance of the owner's or lessee's non profit purpose.~~
  - ~~(e) Industrial and commercial development that is not open or accessible, in its entirety, to the general public due to national security reasons.~~
  - ~~(f) Industrial and commercial development that is not open or accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.~~
- ~~(Amended 4-20-1992, by O 17757 N.S.)~~  
~~(Renumbered to Sec. 26.0702 and added as new section on 5-17-2004, by O 19280 N.S.)~~

§26.0706

**Designation of Commission Chair and Vice Chair**

The Mayor may designate one member as Chair in September of each year in which a Chair is to be selected; however, in the absence of such designation, the Commission shall on or after October 15 of such year select from their members a Chair. The Chair shall take office no earlier than October and no later than December. The Vice Chair shall be nominated by the Chair and elected by a majority vote of the Commission.

**General Public Art Program Allocation Regulations**

- ~~(a) Subject to the provisions of Section 26.0708, no final City approval to occupy any private industrial or commercial development, or any portion thereof, with a total building permit valuation greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless an amount equal to one percent of its total building permit valuation has been set aside by the applicant as a public art program allocation.~~
  - ~~(1) For phased development, calculation of total building permit valuation will be based on the total number of building permits applied for, but not yet issued, for the~~

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~~premises, but does not include any withdrawn permit applications.~~

~~(2) The valuation of any exempt component of a mixed use development shall be deducted from the combined total valuation.~~

~~(3) The calculation of total valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire-rated occupancy classification.~~

~~(b) The public art program may be used by the applicant to comply with the requirements of Chapter 2, Article 6, Division 7 through one of the following means:~~

~~e) Placement of artworks on the premises. If the value of the artwork, including its design, fabrication, and installation, costs, is not equal to or greater than the public art program allocation, the applicant shall pay an in lieu fee equal to the difference between the amount of the public art program allocation and the value of the artwork.~~

~~Maintaining a portion of the premises open and freely accessible for a cultural use. If the value of that portion of the premises which is open and freely accessible for a cultural use is not equal to or greater than the public art program allocation, the applicant shall pay an in lieu fee equal to the difference between the amount of the public art program allocation and the value of the premises which is open and freely accessible for a cultural use.~~

~~d) Payment of an in lieu fee equal to one half of one percent of the total building permit valuation for the development.~~

~~(Amended 4-20-1992, by O-17757 N.S.)~~

~~(Renumbered 5-17-2004, by O-19280 N.S.)~~

§26.0707

### Commissioner Terms

Commissioners shall serve two year staggered terms for a maximum of eight consecutive years and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before an individual can be reappointed.

The expiration date of all terms shall be August 31.

The Chair shall serve a term of two years and can be designated as Chair by the Mayor for one additional year.

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The Vice Chair shall serve a term of one year and can be reelected as Vice Chair by the Commission for two additional one year terms.

### **Public Art Program Allocation Procedures**

~~Upon application for a building permit, the applicant shall be informed of the public art program allocation requirements and referred to the Commission in order to:~~

- ~~(a) Declare in writing the means by which the applicant will comply with the requirements of Section 26.0706; and~~
- ~~(b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0709.  
(Amended 4-20-1992; by O-17757 N.S.)  
(Renumbered 5-17-2007; by O-19280 N.S.)~~

§26.0708

### **Commission Meetings and Reporting**

The Commission shall meet not less than monthly and report to the Mayor and City Council on an as needed basis, but not less than one time per year.

### **General Rules for Public Art Program Allocation Regulations**

- ~~(a) If the applicant pays an in-lieu fee in accordance with the provisions of Section 26.0706(e), no building permit for the development may be issued without payment of the in-lieu fee to the City of San Diego.~~
- ~~(b) If the applicant installs an artwork on the premises or maintains a portion of the premises open and freely accessible for a cultural use in accordance with the requirements of Section 26.0706(e) or (d), no building permit for the development may be issued until the applicant deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one-half of one percent of the total building permit valuation.~~
- ~~(c) Prior to issuance of the Certificate of Occupancy for the development, the applicant shall submit evidence, satisfactory to the Executive Director of the Commission, that:~~

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- (1) ~~If applicable, the value of the artwork installed on the premises is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include the costs of artist design fees, fabrication of the artwork, and installation of the artwork.~~
- (2) ~~If applicable, the value of the portion of the premises which is maintained open and freely accessible for a cultural use is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the development.~~
- (Added 5-17-2004; by O-19280 N.S.)*

§26.0709

**Resignation and Removal of Commissioners**

Any Commissioner may submit written resignation to the Chair. The Commissioner resigning must file a Leaving Office Statement with the City Clerk within thirty days of the effective date of resignation. It is the Chair's responsibility to notify the Mayor of any such resignation.

The Commission may recommend to the Mayor that an individual Commissioner be removed for sufficient cause.

**Declaration of Covenants, Conditions, and Restrictions**

~~If the applicant installs an artwork on the premises or maintains a portion of the premises open and freely accessible for a cultural use in accordance with the requirements of Section 26.0706(e) or (d), the development shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:~~

- (a) ~~The owner of the development shall provide all necessary maintenance of the artwork, including preservation of the artwork in good condition to the reasonable satisfaction of the City and protection of the artwork against destruction, distortion, mutilation, or other modification. The owner of the premises may retain ten percent of the public art program allocation in order to fund the costs of ongoing repair, conservation, maintenance, insurance, and security of the artwork, as necessary to comply with the requirements of Chapter 2, Article 6, Division 7.~~
- (b) ~~The owner of the development shall ensure that the artwork will be located in an area that is open and freely accessible.~~



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- (c) ~~A description of that portion of the premises which will be maintained open and freely accessible and its designated cultural use.~~
- (d) ~~Any other reasonable terms necessary to implement the provisions of Chapter 2, Article 6, Division 7.~~  
~~(Added 5-17-2004, by O-19280 N.S.)~~

§26.0710

**Commission Quorum**

Eight (8) Commissioners shall constitute a quorum authorized to transact business.

**Return of Fees**

- (a) ~~Fees paid to the City of San Diego which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the development, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the fees is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the development for which the fee was paid, and a statement that the person making the request is the fee payer or the current owner of the development.~~
- (b) ~~The City Council shall determine if return of the then unexpended portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:~~
- ~~(1) The City Council finds that the fee is needed for the public art program.~~
  - ~~(2) Funds were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.~~
  - ~~(3) The administrative cost of refunding unexpended fees in accordance with the requirements of Section 26.0710(a) exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the development in not less than three places.~~  
~~(Added 5-17-2004, by O-19280 N.S.)~~

§26.0711

**Commission Conflict of Interest Code**

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A conflict of interest code shall be adopted for Commissioners, subject to City Council approval pursuant to Chapter 2, Article 6, Division 1 of this Code. All Commissioners shall be required to complete and file statement of economic interests in accordance with the conflict of interest code, and shall comply with all applicable ethics laws.

#### **Failure to Maintain Artwork**

~~Failure to maintain artwork in accordance with Chapter 2, Article 6, Division 7 is declared to be a public nuisance.  
(Added 5-17-2004, by O-19280 N.S.)~~

§26.0712

#### **Staff of the Commission for Arts and Culture Established**

There is hereby established staff of the Commission under the direction of the Mayor. The Commission staff shall consist of a full-time Executive Director, professional arts administrators and support staff.

#### **Appeal**

~~Any applicant may seek review of a decision by the Commission under Section 26.0708(c) of Chapter 2, Article 6, Division 7 by filing an application for an appeal hearing with the Executive Director of the Commission no later than ten business days after the Commission's decision.~~

~~The Executive Director of the Commission shall coordinate a date for an appeal hearing before the City Manager or his designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Commission. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The certificate of occupancy may be withheld pending resolution of the appeal.~~

~~At the conclusion of the appeal hearing, the City Manager or his designee may affirm, reverse, or modify the Commission's decision. The decision of the City Manager is final.  
(Added 5-17-2004, by O-19280 N.S.)~~

§26.0713

#### **Duties and Functions – Staff of the Commission for Arts and Culture**

Staff of the Commission shall:

- (a) Develop, implement, evaluate and/or recommend changes to public policy, legislation, programs and services that support the Commission's purpose, duties and functions.

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- (b) Provide administrative support for the *Commission* in the fulfillment of its purpose, duties and functions.
- (c) Develop, implement, evaluate and/or recommend changes to public policy, legislation, programs and services pertaining to the *Commission* staff and its purpose, duties and functions.
- (d) Administer the budget of the *Commission* as directed by the Executive Director.
- (e) Administer the arts and culture allocations within the Citywide TOT Revenue including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category as directed by the Executive Director.
- (f) Administer an open and impartial process for the allocation of TOT funds to local, non-profit arts and culture organizations.
- (g) Evaluate the process for the allocation of TOT funds to local, non-profit arts and culture organizations, and recommend changes, as appropriate.
- (h) Administer the fair distribution of TOT funds, as approved by the Mayor and City Council and as directed by the Executive Director, to non-profit arts and culture organizations to support local arts and culture programming.
- (i) Perform all *collections management activities* and *public art project management activities* pertaining to existing and proposed artworks in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (j) Administer the policies and processes whereby *artworks* are included in *Capital Improvement Program projects* and *Redevelopment Agency projects* and ensure that *artists* are involved as early as possible in the pre-design or design phases for each project.
- (k) Develop and administer open processes for the fair distribution of arts and culture amenities across each City Council District and throughout San Diego's neighborhoods.
- (l) Initiate, conduct and/or sponsor, alone or in partnership with other public agencies or private organizations, programs and services to support local arts and culture organizations and individual *artists*.

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- (m) Serve as the Federal/State/Local State/Federal Local arts and culture program partner.
- (n) Administer programs and services related to arts and culture as directed by the Mayor.

**§26.0714 Appointment and Removal of Executive Director**

The Executive Director of the Commission shall be appointed by the Mayor, and may be removed by the Mayor as provided in Section 29 of the City Charter.

**§26.0715 Duties and Functions – Executive Director**

The Executive Director shall:

- (a) Serve as the head of and be responsible for the administration of the Commission, Commission staff, and their respective purposes, duties and functions.
- (b) Consistent with applicable laws and policies, appoint, assign, supervise and remove all City employees on the Commission staff.
- (c) Consistent with applicable laws and policies, initiate, administer, propose modifications and enforce such agreements and instruments as the Executive Director deems reasonably necessary to implement public policy, legislation, programs and services pertaining to the Commission, Commission staff, and their respective purposes, duties and functions.
- (d) Prepare the annual proposed budget for the Commission and provide recommendations, as appropriate, to the Commission before submitting budget recommendations to the Mayor.
- (e) Direct the administration of the budget for the Commission and the arts and culture allocations within the Citywide TOT Revenue including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.
- (f) Direct the fair distribution of TOT funds, as approved by the Mayor and City Council, to non-profit arts and culture organizations to support local arts and culture programming.
- (g) Serve as the steward of the Civic Art Collection and manage any financial transactions related to collections management activities and public art project management activities pertaining to all existing and proposed artworks in/proposed for the Civic Art

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Collection, or contracted for, exhibited on, or erected on public places.

- (h) Administer the *Public Art Fund*.
- (i) Consistent with applicable laws and policies, initiate agreements to provide professional arts administration services to other agencies, corporations and companies.
- (j) Consistent with applicable laws and policies, prepare and submit reports to the Mayor and City Council pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (k) Consult with and submit reports to the *Commission* pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (l) Manage other duties pertaining to arts and culture as assigned by the Mayor.

**§26.0716****Civic Enhancement Allocation Regulations and Calculations**

- (a) To ensure that the City's increasing urbanization is offset by the creation of *artworks* and venues dedicated to *cultural use*, no final City approval to occupy any private industrial or commercial development, or any portion thereof, with a *total building permit valuation* greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless a *Civic Enhancement allocation* in an amount equal to one percent (when the *applicant* elects to meet the requirements of this Section pursuant to Subdivision (b.1) or (b.2)) or one-half of one percent (when the *applicant* elects to meet the requirements of this Section pursuant to Subdivision (b.3)) of its *total building permit valuation* has been set aside by the *applicant*, subject to the provisions of Section 26.0718.
- (1) For phased development, calculation of *total building permit valuation* will be based on the total number of building permits applied for, but not yet issued, for the premises, but does not include any withdrawn permit applications.

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- (2) The valuation of any exempt component of a mixed use development shall be deducted from the combined total building permit valuation.
  - (3) The calculation of total building permit valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire rated occupancy classification.
- (b) The Civic Enhancement allocation may be used by the applicant to comply with the requirements set forth herein through one of the following means:
- (1) Placement of artworks valuing one percent of the total building permit valuation for the development on the premises. If the value of the artwork, including art consultant fees and the costs for design, fabrication, installation, and documentation, is not equal to or greater than the Civic Enhancement allocation, the applicant shall pay into the Public Art Fund an amount equal to the difference between the amount of the Civic Enhancement allocation and the value of the artwork.
  - (2) Maintaining a portion of the premises which is open and accessible for cultural use. If the value of that portion of the premises which is open and accessible for cultural use is not equal to or greater than the Civic Enhancement allocation, the applicant shall pay into the Public Art Fund an amount equal to the difference between the amount of the Civic Enhancement allocation and the value of the premises which is open and accessible for cultural use.
  - (3d) Depositing into the Public Art Fund, payment of an in-lieu fee equal to one-half of one percent of the total building permit valuation for the development.

**§26.0717****Civic Enhancement Allocation Declaration**

Upon applying for a building permit, the applicant shall:

- (a) Declare in writing the means by which the applicant will comply with the requirements of Section 26.0716 (b); and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0719.

§26.0718Compliance with Civic Enhancement Allocation Regulations

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- (a) If the *applicant* chooses to pay an in-lieu fee in accordance with the provisions of Section 26.0716 (b.3.), no building permit for the *development* may be issued without payment of the in lieu fee to the City of San Diego's *Public Art Fund*.
- (b) If the *applicant* chooses to install an *artwork* on the *premises* or maintains a portion of the *premises open and accessible* for a *cultural use* in accordance with the requirements of Section 26.0716 (b.1.) or (b.2.), no building permit for the *development* may be issued until the *applicant* deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the Mayor and City Attorney in an amount equal to one-half of one percent of the *total building permit valuation*. Any costs associated with acquiring the required security are the responsibility of the *applicant*, and may not be applied to the *Civic Enhancement allocation*.
- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit to Commission staff evidence, satisfactory to the Executive Director of the Commission, that:
- (1) If applicable, the value of the *artwork* installed on the *premises* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include the costs of art consultant fees, *artist* design fees, fabrication of the *artwork*, installation of the *artwork*, and/or documentation of the *artwork*.
  - (2) If applicable, the value of the portion of the *premises* which is maintained *open and accessible* for *cultural use* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the *development*.

§26.0719Declaration of Covenants, Conditions, and Restrictions for Developments Subject to the Civic Enhancement Allocation Regulations

If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and accessible* for *cultural use* in accordance with the requirements of Section 26.0716 (b.1.) or (b.2.), the *development* shall

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have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the *development* shall provide all necessary maintenance of the *artwork*, including preservation of the *artwork* in good condition to the reasonable satisfaction of the City and protection of the *artwork* against destruction, distortion, mutilation, or other modification. The owner of the *premises* may retain ten percent of the *Civic Enhancement allocation* in order to fund the costs of conservation, ongoing maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements set forth herein.
- (b) The owner of the *development* shall ensure that the *artwork* will be located in an area that is *open and accessible*.
- (c) A description of that portion of the *premises* which will be maintained *open and accessible* and its designated *cultural use*.
- (d) Any other reasonable terms necessary to implement the provisions set forth herein.

**§26.0720****Return of Civic Enhancement Allocations**

- (a) *Civic Enhancement allocations* paid into the City of San Diego's *Public Art Fund* which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the *Civic Enhancement allocations* is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the *development* for which the *Civic Enhancement allocation* was paid, and a statement that the person making the request paid the *Civic Enhancement allocation* or is the current owner of the *development*.
- (b) The City Council shall determine if return of the then unexpended portion of the *Civic Enhancement allocation* and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:
  - (1) The City Council finds that the funds are needed for *artwork or cultural use*.



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(2) The Civic Enhancement allocations were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.

(3) The administrative cost of refunding unexpended Civic Enhancement allocations in accordance with the requirements of Section 26.0720 (a) exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the development in not less than three places.

**§26.0721 Failure to Maintain Artwork Created Through Civic Enhancement Allocations**

Failure to maintain artworks created through Civic Enhancement allocations is declared to be a public nuisance.

**§26.0722 Civic Enhancement Allocation Appeal**

Any applicant may seek review of a decision by the Executive Director of the Commission under Section 26.0718 (c) by filing an application for an appeal hearing with the Executive Director of the Commission no later than ten business days after the Executive Director's decision.

The Executive Director of the Commission shall coordinate a date for an appeal hearing before the Mayor or the Mayor's designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Executive Director. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The certificate of occupancy may be withheld pending resolution of the appeal.

At the conclusion of the appeal hearing, the Mayor or the Mayor's designee may affirm, reverse, or modify the Executive Director's decision. The decision of the Mayor is final.

**§26.0723 Civic Enhancement Allocation Exemptions**

The Civic Enhancement allocation requirements do not apply to the following:

(a) Industrial and commercial development with a total building permit valuation of less than \$5,000,000 or current threshold pursuant to Section 26.0716.

(b) Any premises which has an institutional use, such as churches, hospitals, and schools.

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- (c) Any premises which is used solely for residential development.
- (d) Any premises which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.
- (e) Industrial and commercial development that is not open and accessible, in its entirety, to the general public due to national security reasons.
- (f) Industrial and commercial development that is not open and accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

**§26.0724****Control of Artworks**

No artworks shall be contracted for, exhibited on, or erected on public places, or become the property of the City by acquisition or otherwise, or be in the custody of the City by loan or otherwise, unless such artworks, shall first have been submitted to and accepted by the Commission staff, and following review and recommendation by the Commission. No existing artworks owned by or in the custody of the City shall be deaccessioned, removed, relocated, conserved, altered, exhibited or disposed of in any way without the approval of Commission staff, and following review and recommendation by the Commission.

**§26.0725****Management of Artworks**

All collections management activities shall be the responsibility of the Commission staff, and undertaken with the advice of the Commission. Ordinary artwork maintenance of artworks in the Civic Art Collection is the responsibility of the City department at which the artwork is sited and shall be undertaken at the direction of Commission staff.

**§26.0726****Acquisition of Artworks**

- (a) Consistent with applicable laws and policies, Commission staff may authorize the purchase of artworks for inclusion in the Civic Art Collection following the review and recommendation of the Commission.
- (b) Consistent with applicable laws and policies, Commission staff shall, on behalf of the City, accept, with or without conditions, or reject donations, bequests or incoming loans of artwork following the review and recommendation of the Commission. Title to all

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donated and bequeathed artworks accepted by the City and accessioned into the Civic Art Collection shall be vested and held in the name of the City.

**§26.0727 Deaccession and Disposal of Artworks**

- (a) Consistent with applicable laws and policies, Commission staff shall deaccession and dispose of artworks from the Civic Art Collection, following the review and recommendation of the Commission.
- (b) When an artwork to be deaccessioned and disposed of through sale has an estimated fair market value of \$250,000 or more, Commission staff shall submit a report on the recommendation for the sale to the Mayor and City Council prior to initiating the sale.
- (c) When an artwork is deaccessioned and disposed of through sale, the artwork shall be sold through methods either administered by or approved by the Purchasing Agent consistent with applicable laws and policies. When an artwork is deaccessioned and disposed of through sale or exchange, the Executive Director, consistent with applicable laws and policies, may administer acceptance of all deeds of conveyance necessary and proper to affect a duly authorized sale or exchange.

**§26.0728 Loans from the Civic Art Collection**

Commission staff is authorized to loan artworks from the Civic Art Collection to City departments, agencies, institutions, organizations or galleries. Loans are made according to the terms and conditions of loan agreements.

**§26.0729 Reproductions or Adaptations of Artworks**

Commission staff is authorized to negotiate with the copyright holder for each artwork in or proposed for inclusion in the Civic Art Collection for the purpose of acquiring a license to make, or cause to be made reproductions or adaptations of artworks. Reproductions or adaptations of artworks are made according to the terms and conditions of the licensing agreement.

**§26.0730 Proceeds from the Sale, Loan, Reproduction or Adaptation of Artworks**

All monies received from the sale of artworks from the Civic Art Collection must be expended on new acquisitions for the Civic Art Collection. Proceeds from the loan of artworks from the Civic Art

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Collection or from the licensing of the making of reproductions or adaptations thereof, less any payments due, shall be deposited into the Public Art Fund.

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## Proposed Amendments to Commission for Arts and Culture Municipal Code

The Committee on Rules, Open Government, and  
Intergovernmental Relations of the  
City Council of the City of San Diego

June 25, 2008

## The Need for Change

### Codify:

Role and work of the Commission

Duties and function of Commission  
staff

Commission as steward of the City's  
art collection

## The Benefits of Change

- Update role and functions of Commission
- Establish role of Commission staff
- Clarify that Executive Director, not Commission, is City's fiduciary agent
- Update conflict of interest requirements for Commissioners
- Update appointment methods, terms and qualifications for Commissioners

## The Benefits of Change

- Establish steward for City's art collection
- Adherence to new art laws
- Define process for:
  - Acquisition and deaccession
  - Donations and loans
  - Operation, exhibition and storage
  - Maintenance and conservation
  - Accurate recording of City's art assets

## Methodology of Change

- Implement recommendations in *2004 Public Art Master Plan*
- Compare with other public agencies' codes
- Review of latest laws and GASB
- Four years of stakeholder engagement

## Follow-Up

Creation of Administrative Regulations and Departmental Instructions to follow adoption of municipal code changes

## Call to Action

Recommend amending Chapter 2, Article 6, Division 7 of the San Diego Municipal Code relating to role of the Commission and staff and management of City owned artworks as presented



000197

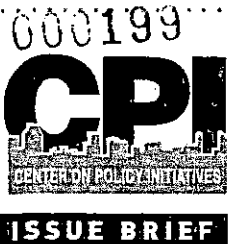
## SAN DIEGO ARTS &amp; CULTURE POLICY RECOMMENDATIONS

1. Commission must be residents of each Council District
2. Large employer Non Profits must pay Living Wage.
3. Pay Differential between top pay and bottom can not exceed 10 times
4. Funding may not go to Organizations that pay more than P & R Director
5. Organizations must comply with Public Records and Brown Act spirit

Non Profit Supported Organizaation	2008 Funding	CEO Pay	Revenues	Expenses	Assets
S D Opera Association	\$ 462,351	\$ 383,250	\$ 17,157,196	\$ 17,133,133	\$ 32,960,353
Museum of Contemporary Art San Diego	\$ 315,102	\$ 305,834	\$ 12,524,496	\$ 7,833,480	\$ 71,613,120
The Old Globe	\$ 459,351	\$ 295,982	\$ 24,204,994	\$ 17,153,618	\$ 46,055,268
S D Zoological Society	\$ 8,946,525	\$ 243,399	\$ 177,761,875	\$ 157,624,710	\$ 222,153,899
La Jolla Playhouse T&A Foundation of SD	\$ 388,187	\$ 232,826	\$ 15,111,083	\$ 14,850,642	\$ 24,315,159
S D Symphony Orchestra Association	\$ 458,774	\$ 232,000	\$ 15,122,331	\$ 16,355,425	\$ 6,880,676
SD Society of Natural History	\$ 400,932	\$ 203,000	\$ 11,390,492	\$ 13,796,694	\$ 26,232,252
S D Museum of Art	\$ 380,483	\$ 180,000	\$ 10,199,014	\$ 10,579,580	\$ 79,537,012
Park & Recreation Department	\$ 115,432,828	\$ 143,268	\$ 115,432,828	\$ 115,432,828	Incredible!!

Source: GuideStar

jwstamp@cox.net



August 28, 2007

# Earnings, Poverty and Income Inequality in San Diego County

Analysis of regional data from the US Census Bureau  
2006 American Community Survey

Real average earnings for workers in San Diego County dropped by 3.9% from 2005 to 2006, including earnings from wages and self-employment.

San Diego County has 105,225 households living below the federal poverty level and thousands more with incomes insufficient for the county's high cost of living.

A new local measure shows a large income gap between rich and poor in the county. The 20% of households with the highest incomes claimed half (49%) of all income in the county, while the lowest-earning fifth of households got less than a 4% sliver of the pie.

## Key Findings

### Earnings in San Diego County

- Average earnings for full-time workers fell by 3.9% in 2006, after adjusting for inflation. Nationally, it was the third consecutive year of declining earnings.
- Among the county's 995,021 full-time, year-round workers, the average annual earnings were \$55,700. There were 214,160 full-time workers who earned less than \$25,000 a year.
- Across occupations, women working full-time year-round during 2006 earned 20% less than male workers.

### Income in San Diego County

- San Diego County has considerable income disparity, the census data reveals in its first county-by-county use of the Gini ratio, the standard international measure of income inequality. The 20% of households with the highest incomes claimed half (49%) of all income in the county, while the lowest-earning fifth of households got less than a 4% sliver of the pie.
- Inequitable income distribution creates a "teardrop" economy, bulging at the bottom with low-income individuals and families.
- Racial and ethnic income disparities persist, with disproportionately lower income for Hispanic and African-American households.
- Median household income in the county was \$59,591 in 2006, 2.4% above the 2005 level in real dollars.

### Poverty in San Diego County

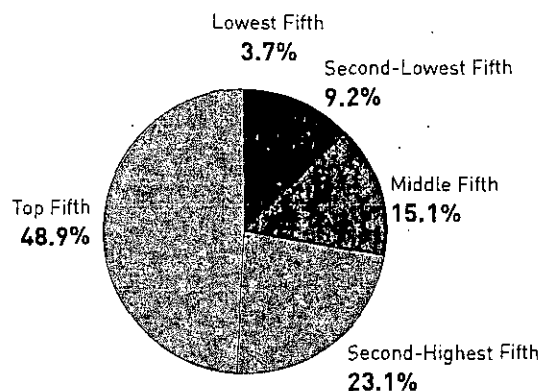
- In 2006, 331,370 individuals in San Diego County live below the federal poverty level, a poverty rate of 11.7%. There are 105,225 households in the county with incomes below the federal poverty level, which is widely acknowledged to be far less than real poverty.
- More than a quarter (27.6%) of families headed by single mothers live in poverty; they are twice as likely to be impoverished as any other family type.
- Poverty rates in the county vary by city from 6% in Carlsbad to 15% in Vista.

000200

## Income in San Diego County

The county's median household income—the level higher than half the households and lower than half—was \$59,591 in 2006, 2.4% above the inflation-adjusted 2005 level of \$56,954.

### Share of the Pie: Distribution of Aggregate Income by Quintile

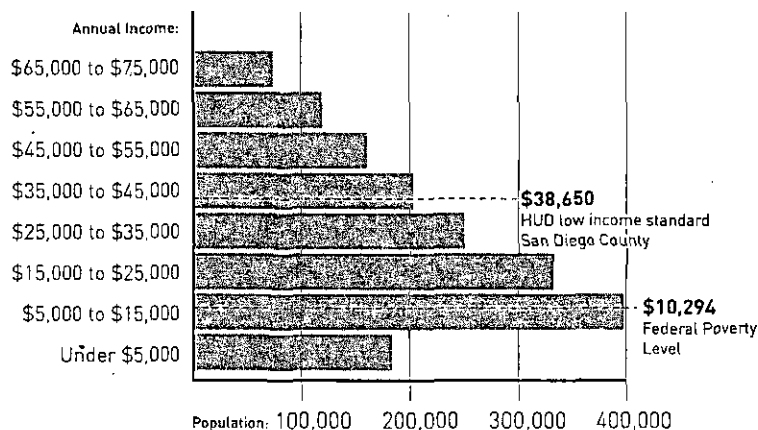


### Share of Total Income

Distribution of total income in the county, measured for the first time this year, was highly uneven. The 20% of households with the highest incomes claimed half (49%) of all income in the county, while the lowest-earning fifth of households got less than a 4% sliver of the pie.

The Census Bureau's first county-by-county use of the Gini ratio, the standard international measure of income inequality, also reveals considerable income disparity in San Diego County. The county's Gini ratio\* was 0.451, comparable to the statewide and national ratios.

### San Diego County Income Distribution up to \$75,000 a year\*

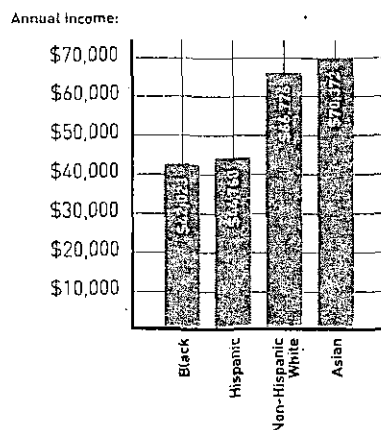


### Income Distribution

Income in San Diego County is distributed in a teardrop shape. Among county residents who have any income, 91% have income below \$75,000 a year. The Census Bureau does not provide comparable data for the huge income range above \$75,000, which accounts for only 9% of county residents with income, or 164,000 people.

The US Housing and Urban Development (HUD) low-income threshold for San Diego County is \$38,650 a year for a 1-person household.

### Median Household Income by Race



### Racial Disparity

A wide racial disparity persists in the county. The median income for Hispanic households was only 75% of the overall median, and Black households 70%, while median income for White and Asian households exceeded the overall countywide level.

\*The Gini ratio, developed by Italian statistician Corrado Gini, assigns a higher number the more unequally income is distributed. A measure of 0 indicates perfect equality; i.e., all people have equal shares of income, while a 1 indicates perfect inequality; i.e., one person has all the income and the rest have none.

000201

## Poverty in San Diego County

There are 331,370 individuals in San Diego County living below the federal poverty level, a poverty rate of 11.7%. This includes 109,507 children and 104,270 working adults.

The federal poverty level (FPL) is set nationally according to family size (in 2006: \$10,295 for a single adult and \$20,615 for a family of four) and is widely acknowledged to be far less than the real poverty level based on the high cost of living in cities such as San Diego. CPI has calculated that a single person needs an income of \$26,000 to meet basic living expenses in this county.<sup>1</sup>

Forty four percent (44.5%) of adults in poverty were working either full-time or part-time.

### Households in Poverty

	# in poverty	% in poverty
<b>Families in Poverty</b>	<b>55,484</b>	<b>8%</b>
Married Couples with children	17,244	7%
Married Couples with no related children	7,300	3%
Single Dads with children	4,027	14%
Single Moms with children	22,401	28%
Single Adults without children	4,512	7%
<b>Other Households in Poverty</b>	<b>49,741</b>	<b>12%</b>
Female Householder	28,637	12%
Male Householder	21,104	16%

### Families in Poverty

There are 105,225 households in the county with income below the federal poverty level, including 55,484 families (defined by the Census Bureau as people living together who are related by marriage, birth or adoption) and 49,741 other households.<sup>2</sup>

More than a quarter (27.6%) of families headed by single mothers live in poverty; they are twice as likely to be impoverished as any other family type.

### Poverty Rates by City in San Diego County

Carlsbad	6.0%
Oceanside	10.0%
Chula Vista	11.0%
Escondido	13.5%
San Marcos	13.1%
San Diego	13.4%
Vista	15.2%
El Cajon	15.8%

### Poverty by City

Cities within the county vary in the percentage of population living below the official federal poverty level.

### Full-time Workers in San Diego County

Workers in San Diego County	<b>955,021</b>	<b>100%</b>
Workers earning less than \$50,000	544,536	57.02%
Workers earning less than \$25,000	214,160	22.42%

<sup>1</sup> Making Ends Meet, 2005

<sup>2</sup> There are 49,741 households in poverty in the county they're not defined as 'families' by the Census Bureau. This includes single adults and people living together who are not related by marriage, birth or adoption.

000202

## Employment and Earnings in San Diego County

Among the county's 995,021 full-time, year-round workers, the average annual earnings were \$55,700. There were 214,160 full-time workers who earned less than \$25,000 a year, while 544,536 earned less than \$50,000.

Average real earnings for full-time workers fell by 3.9% in 2006, as earnings from wages and self-employment were unable to catch up with the rate of inflation. Nationally, it was the third consecutive year of declining earnings.

### Median Earnings By Industry By Gender

	Total Employment	Male	Female	% Gender Difference
Retail trade	147,600	\$40,095	\$28,475	29%
Accommodation and food services	132,300	\$23,072	\$22,012	5%
Educational services	120,300	\$56,968	\$44,103	23%
Government (excluding education)	118,500	\$52,582	\$46,572	11%
Professional, scientific, and technical services	110,600	\$77,317	\$54,914	29%
Health care and social assistance	103,700	\$52,436	\$36,464	30%
Manufacturing	103,600	\$55,254	\$39,612	28%
Construction	92,600	\$40,624	\$39,514	3%
Administrative & support & waste management services	86,300	\$26,390	\$31,678	-20%
Finance and insurance	53,300	\$70,570	\$46,849	34%
Other services (except public administration)	48,900	\$36,120	\$23,292	36%
Wholesale trade	45,100	\$50,776	\$45,540	10%
Information	37,200	\$66,636	\$48,810	27%
Real estate and rental and leasing	30,400	\$47,184	\$42,239	10%
✓ Arts, entertainment, & recreation	23,900	\$35,583	\$31,358	12%
Transportation & warehousing	21,900	\$42,438	\$45,044	-6%
Management of companies & enterprises	16,900	\$65,222	\$42,177	35%
Agriculture, forestry, fishing & hunting	11,000	\$21,099	\$14,189	33%
Utilities	6,400	\$73,324	\$46,070	37%
Mining	500	\$38,617	...	...
<b>All Industries</b>	<b>1,311,000</b>	<b>\$47,395</b>	<b>\$38,120</b>	<b>20%</b>

#### Earnings by gender

Across occupations, women working full-time year-round during 2006 earned 20% less than male workers. Among large industries in the county, the gender gap was largest (29%) in retail trade, while women working in accommodation and food services had the lowest median income.

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CITY CLERKS OFFICE  
SAN DIEGO, CA

### About CPI

The Center on Policy Initiatives is a nonprofit research and policy action center established in 1997. CPI focuses on economic and social justice issues affecting working people in the San Diego region. All CPI research publications are available at [www.onlineCPI.org](http://www.onlineCPI.org).

000203

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** October 3, 2008  
**TO:** Magdalena Lujan, Office of the City Clerk  
**FROM:** City Attorney  
**SUBJECT:** Corrected version of O-2009-21: Oct 7, 2008 City Council Agenda Item 55

---

Please find enclosed corrected copies of O-2009-21, related to the Commission of Arts and Culture, in support of Item 55 on the City Council's Agenda for October 7, 2008. We corrected the digest and recitals of the Ordinance to clarify that the Executive Director, rather than the Commission, will be the steward of the City's public art collection. We revised Section 26.0704(o) to correct a typographical error.

MICHAEL J. AGUIRRE, City Attorney

By

Sanna R. Singer, Deputy City Attorney

SRS

Cc: Dana Springs, Commission Arts and Culture

000205



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: October 1, 2008 REPORT NO: 08-136

ATTENTION: Council President and City Council  
Docket of October 7, 2008

SUBJECT: Amendments to San Diego Municipal Code Sections 26.0701 - 26.0730,  
Commission for Arts and Culture

REFERENCE: 1) Summary of Changes by City Attorney  
2) City Attorney Digest (O-2009-21)  
3) Ordinance (O-2009-21)  
4) Strikeout Ordinance (O-2009-21)

REQUESTED ACTION:

Approve an ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730,  
Commission for Arts and Culture

STAFF RECOMMENDATION:

Approve an ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730,  
Commission for Arts and Culture

SUMMARY:

The establishment of the City of San Diego Commission for Arts and Culture (Commission) by a 1989 ordinance is codified in Chapter 2, Article 6, Division 7 of the San Diego Municipal Code. The Commission's purpose is to serve in an advisory capacity to the Mayor and City Council on promoting, encouraging and increasing support for the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

Fifteen diverse volunteers comprise the Commission and include arts and culture patrons, business leaders, professionals including lawyers and financial management experts, community activists, design experts, and artists. Through effective public policy, advocacy, strategic partnerships and funding, the Commission supports non-profit organizations, neighborhood arts programs, festivals, public art, cultural tourism and innovative programming which all contribute to the quality of life, the economy and the vibrancy of San Diego. The Commission administers the Allocations Programs, through which Transient Occupancy Tax funds support over 100 local non-profit organizations through a rigorous, review process which addresses fiscally sound and accountable management practices and encourages the highest quality of arts and culture offerings. The Commission's Public Art Program provides the process through which the City commissions original works of art to be integrated into new capital improvement projects and through which eligible private developments are required to include art or cultural space.

As active participants in the ongoing, Citywide efforts to control spending, increase cash flow, create efficiencies and accurately document City-owned assets, the Commission was motivated to examine and evaluate, over a three-year span, the accuracy and effectiveness of Chapter 2, Article 6, Division 7 of the San Diego Municipal Code, hereinafter referred to as "SDMC 26.0701 et. seq."

The evaluation revealed that, during the 19 years since the Commission was established, a significant gap has formed between the contemporary work of the Commission and what SDMC 26.0701 et. seq. currently reflects. In addition to developing a range of amendments designed to remedy that gap, the Commission identified two fundamental shortcomings in SDMC 26.0701 et. seq. and is proposing remedial amendments:

1. Absence of duties and functions of the Executive Director and Commission staff.

SDMC 26.0701 et.seq. does not currently distinguish the duties and functions of the Executive Director nor of the Commission staff. In contrast, the San Diego Municipal Code sections which establish the Ethics Commission (added 6-5-2001) and the City of San Diego Commission on Gang Prevention and Intervention (added 4-7-2006) do specify the roles and work of the Executive Directors and staff of each.

Additionally, SDMC 26.0701 et.seq. does not currently distinguish between the fiduciary responsibilities of the Commission, a board of appointed volunteers, and the Executive Director, a City employee. For greater fiscal accountability, the Executive Director should be the recognized fiduciary agent for the management of the public funds allocated to the Commission by the Mayor and City Council each year.

2. No steward for the City's art collection has been formally assigned over the span of nearly a century.

Since its establishment in 1989, the Commission has voluntarily assumed the role of the steward for the City's art collection. The City owns 1,144 diverse works of portable and fixed art acquired through a variety of methods over the past 99 years. The oldest artwork in the City's collection is Irving Gill's 1909 Horton Plaza Fountain and the most recent artwork to be accessioned into the City's art collection is Sarah Lejeune's 2008 public artwork for the South Belmont Comfort Station in Mission Beach. Early on, donations were the primary source of the City's art acquisitions. During the 1930s, the Works Progress Administration/Federal Arts Project yielded a significant number of artworks that came under the care of the City. In the late 1980s, the City passed a policy encouraging the inclusion of original, commissioned artwork into capital improvement projects, and, as recently as 2004, the City Council amended Council Policy 900-11 to require the expenditure of 2% for public art in the City's eligible capital improvement projects.

When an agency acquires art, it also assumes the responsibility for caring for that art. Beginning 19 years ago, the Commission began funding and conducting, through both paid consultants and unpaid interns, comprehensive surveys of the City's art collection in order to record the type, location and condition of the City's art assets. To date, three such surveys have been completed. In addition, the Commission has applied for,



received and administered numerous grants from private foundations and federal agencies such as The Getty Foundation and the National Endowment for the Arts for the purpose of funding professional conservation surveys of selected artworks and funding the conservation of other selected artworks.

The Commission also engages experts in the field of art collections management whenever possible. One of the Commission's advisory subcommittees, the Public Art Committee, includes a volunteer museum registrar who provides professional, practical advice to the Commission on the methods and practices of recording a collection of artworks. A current member of Commission staff holds a Masters degree in Museum Studies and has extensive experience as an art appraiser.

The City Council's approval of the requested action outlined above is anticipated to result in:

- Updated duties and functions that accurately reflect the contemporary work of the Commission;
- Delineation of the duties and functions of the Executive Director and Commission staff;
- Clarification that the Executive Director, not the Commission, acts as the City's fiduciary agent in the management of the public funds allocated to the Commission by the Mayor and City Council each year;
- Formal establishment of a steward for the City's art collection, a role the Commission has been fulfilling unofficially for 19 years;
- Resources and labor saved through the establishment of the Commission as the single point of contact for the oversight of the City's art collection including processing art donations and loans, deaccessioning, maintenance, repair, conservation, operation, storage and exhibition of the City's art assets;
- Improved customer service for art donors, lenders and borrowers;
- An increase in the quality and, therefore, the value of the City's art collection;
- Accurate documentation of the City's art assets;
- Adherence to the standards of the Governmental Accounting Standard Board (GASB 34) and the City's *2004 Public Art Master Plan*;
- Clarified conflict of interest requirements for Commissioners;
- Clarified appointment methods, terms and qualifications for Commissioners.

#### FISCAL CONSIDERATIONS:

No costs will be incurred by approval of the proposed amendments. However, it is anticipated that the amendments may lead to improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets.

#### PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On June 25, 2008, the Committee on Rules, Open Government, and Intergovernmental Relations of the City Council voted to recommend approval of the staff recommendation and to refer this item to the City Council for consideration with additional "clean up" to the SDMC 26.0701 et.

seq. amendments by the City Attorney. The City Attorney's recommendation for "clean up" language is attached.

San Diego Municipal Code Chapter 2: Government; Article 6: Board and Commissions; Division 7: Commission for Arts and Culture was added 5-15-1989 by O-17298 N.S. Amended, added and/or renumbered 4-20-1992, by O-17757 N.S.; 4-10-2000, by O-18786 N.S.; 5-17-2004, by O-19280 N.S.

#### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 18, 2008, the Commission voted to recommend to the Mayor and City Council approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On April 7, 2008, the Policy Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On May 3, 2007, the Public Art Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

In addition, the research and development of the proposed amendments engaged the following individuals, groups and organizations:

- Deputy Chief of Community and Legislative Services
- City Attorney's staff
- Director, Major Gifts and Philanthropy Planning
- Executive Director, Commission for Arts and Culture and staff
- Visual Arts Librarian and Manager of the Library Department's Visual Arts Program
- Grants & Gifts Business Process Reengineering (BPR) Team
- Ethics Commission staff
- Purchasing and Contracting Department staff
- Other municipal governments nationwide
- National Public Art Network of Americans for the Arts

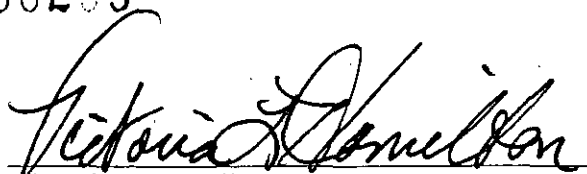
#### KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the Commission, the Executive Director and Commission staff as well as elected officials, City staff and San Diego's citizenry. Projected impacts may include improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets. Increased labor associated with educating City staff about any new or amended duties and functions assigned to the Commission, the Executive Director and Commission staff may be possible.

The City's requirements, adopted in 2004, for the inclusion of art and/or cultural space in eligible private developments are not materially changed by these proposed amendments.

None of the proposed amendments shall be construed to limit or abridge the powers or exclusive jurisdiction of the City's Library Department over its Visual Arts Program.

000209



Victoria L. Hamilton  
Executive Director, Commission for Arts  
and Culture



Kris Michell  
Deputy Chief for Community and  
Legislative Services

OFFICE OF  
THE CITY ATTORNEY  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

Michael J. Aguirre  
CITY ATTORNEY

September 4, 2008

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PUBLIC ART ORDINANCE: SUMMARY OF CHANGES BY CITY ATTORNEY TO  
DRAFT ORDINANCE PRESENTED TO RULES, OPEN GOVERNMENT AND  
INTERGOVERNMENTAL RELATIONS COMMITTEE

### INTRODUCTION

At the June 25, 2008 hearing of the City Council's Rules, Open Government and Intergovernmental Relations Committee [Rules Committee], the Rules Committee voted to approve amendments and additions to Chapter 2, Article 6 of San Diego Municipal Code [the Code] relating to the Commission for Arts and Culture [Commission]. During the hearing, the City Attorney recommended that our office perform a final review of the draft ordinance to ensure proper form and consistency with existing law. For the City Council's convenience, we have summarized below the changes we have made to the draft ordinance since it was presented to the Rules Committee:

1. To remain consistent with the rest of the Code, change "Mayor" to "City Manager" in the following sections: 26.0701; 26.0712; 26.0713(d); 26.0713(l); 26.0716(b); and 26.0720.
2. To remain consistent with the rest of the Code, change the phrase "Mayor and City Council" to "Mayor, City Council and City Manager" in the following sections: 26.0704(j); 26.0704(q); 26.0713(j); and 26.0725(b).
3. To remain consistent with the rest of the Code, remove the term "Mayor" from the following sections: 26.0702, definition of *Capital Improvements Program project*, and 26.0713(f).
4. To remain consistent with the rest of the Code, change the phrase "Citywide Transient Occupancy Tax Revenue" to "TOT funds" in the following sections: 26.0702, definition of *Public Art Fund*; 26.0704(c); 26.0704(h); and 26.0713(e).
5. To clarify the types of funds included in the Public Art Fund, change the definition of "Public Art Fund" in section 26.0702 to read: "...monetary bequests and donations for

specific or unspecified *cultural use*; grants; grant matching funds; and Transient Occupancy Tax [TOT] funds...”

6. Remove the following explanatory phrase from the definition of “Acquisition” in section 26.0702: “*Acquisitioned artworks are accessioned into the Civic Art Collection.*”
7. Remove the phrases “consistent with City Council policy” and “consistent with applicable laws and policies” from the following sections: 26.0704(p); 26.0713(b); 26.0713(c); 26.0713(i); 26.0713(j); 26.0724(a); 26.0724(b); 26.0725(a); and 26.0725(c).
8. To avoid overlap with the role of the City Treasurer, change section 26.0704(l) regarding the duties and functions of the Commission to read: “Advise on the ~~administration of allocations to and from~~ the *Public Art Fund*”; and change section 26.0713(h) regarding the duties and functions of the Executive Director to read: “~~Administer~~ Oversee allocations to and from the *Public Art Fund*.”
9. To clarify the role of the Commission, change section 26.0704(m) to read: “Advise on the ~~inclusion of policies and processes whereby artworks are included~~ in *Capital Improvements Program projects....*”
10. To avoid redundancy and streamline sections regarding the Executive Director and Commission staff duties, remove previous sections 26.0712 (“Staff of the Commission for Arts and Culture Established”), 26.0713 (“Duties and Functions – Staff of the Commission for Arts and Culture”), 26.0714 (“Appointment and Removal of Executive Director”), and 26. 0715 (“Duties and Functions- Executive Director”); and replace with new sections 26.0712 (“Commission for Arts and Culture Executive Director and Staff”) and 26.0713 (“ Duties and Functions- Executive Director”).
11. Change the first sentence in the second paragraph in section 26.0705 to read: “Board Chairs, Presidents or other officers of the board of directors of an organization funded by the City through the Commission may not be considered...”; and change the second sentence in the same paragraph to read: “A ~~senior~~ high-level, full-time employee...”
12. To clarify the duration of Commissioner terms and reappointment intervals, make the following changes in section 26.0707:
  - a. Change the first sentence in the third paragraph in section 26.0707 to read: “The Chair shall serve a term of two years and can be designated as Chair by the Mayor for one additional, consecutive year.”
  - b. After the first sentence of the third paragraph in section 26.0707, add: “An interval of two years must pass before an individual can be reappointed as Chair.”
  - c. Change the first sentence in the fourth paragraph in section 26.0707 to read: “The

Vice Chair shall serve a term of two years and can be reelected as Vice Chair by the *Commission* for two additional consecutive one-year terms."

- d. After the first sentence of the fourth paragraph in section 26.0707, add: "An interval of two years must pass before an individual can be reappointed as Vice Chair."

13. Change section 26.0708 ("Commission Meetings and Reporting") to read: "The *Commission* ~~shall~~ will meet ~~not less than~~ monthly and ...."

14. Change section 26.0721(e) ("Civic Enhancement Allocation Exemptions") to read:  
"Industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to ~~national~~ security reasons."

We have not enumerated additional corrections to grammar, punctuation, and numbering that do not materially change the provisions of the draft ordinance that was presented to the Rules Committee on June 25, 2008.

Respectfully submitted,



MICHAEL J. AGUIRRE  
City Attorney

SRS:js  
RC-2008-21

000215

# REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

 1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE OR) 54  
10/21

 TO:  
CITY ATTORNEY

 2. FROM (ORIGINATING DEPARTMENT):  
COMMISSION FOR ARTS AND CULTURE

 3. DATE:  
7/1/08

 4. SUBJECT:  
Amendments to San Diego Municipal Code Sections 26.0701 - 26.0730, Commission for Arts and Culture

 5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)  
Victoria L. Hamilton, 619-236-6778, MS 652

 6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)  
Dana Springs, 619-236-6790, MS 652

 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☒

## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	n/a				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	n/a				n/a
ORGANIZATION	n/a				
OBJECT ACCOUNT	n/a				
JOB ORDER	n/a				
C.I.P. NUMBER	n/a				
AMOUNT	\$0.00				

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	VICTORIA L. HAMILTON	7/2/08	8	DEPUTY CHIEF	KRIS MICHELL	9/8/08
2	<del>AS/DBD</del>			9	COO	JAY GOLDSTONE	9/11/08
3	EOCP		7/10/08	10	CITY ATTORNEY	SANNA SINGER	9/15/08
4	LIAISON OFFICE	ED PLANK	9/9/08	11	ORIGINATING DEPARTMENT	VICTORIA L. HAMILTON	9/15/08
5					DOCKET COORD:	COUNCIL LIAISON:	9/23/08
6					COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7					<input type="checkbox"/> REFER TO:	COUNCIL DATE:	10/7/08

 11. PREPARATION OF: ☐ RESOLUTION(S) ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Amending San Diego Municipal Code Sections 26.0701 - 26.0730, Commission for Arts and Culture

### 11A. STAFF RECOMMENDATIONS:

Approve ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730, Commission for Arts and Culture

### 12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Citywide

ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore is not subject to CEQA per CEQA Guidelines Section 15060 (C)(2)

HOUSING IMPACT: None

OTHER ISSUES: None

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: \_\_\_\_\_ REPORT NO: \_\_\_\_\_  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Commission for Arts and Culture  
SUBJECT: Amendments to San Diego Municipal Code Sections 26.0701  
- 26.0730, Commission for Arts and Culture  
COUNCIL DISTRICT(S): Citywide  
CONTACT/PHONE NUMBER: Victoria L. Hamilton, (619) 236-6778

**REQUESTED ACTION:**

Approve an ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730, Commission for Arts and Culture

**STAFF RECOMMENDATION:**

Approve an ordinance amending San Diego Municipal Code Sections 26.0701 - 26.0730, Commission for Arts and Culture

**EXECUTIVE SUMMARY:**

As part of the ongoing City-wide efforts to control spending, increase cash flow, create efficiencies and accurately document City-owned assets, the Commission for Arts and Culture (Commission), has conducted a three-year examination of the San Diego Municipal Code Chapter 2: Government; Article 6: Board and Commissions; Division 7: Commission for Arts and Culture Chapter 2, Article 6, Division 7 of the San Diego Municipal Code, hereinafter referred to as "SDMC 26.0701 et. seq." This section of the Municipal Code establishes the Commission and outlines its purpose, duties and functions. The Commission's duties and functions have evolved, necessitating the proposed amendments.

The City Council's approval of the requested action outlined above is anticipated to result in:

- Updated duties and functions that accurately reflect the contemporary work of the Commission;
- Delineation of the duties and functions of the Executive Director and Commission staff;
- Clarification that the Executive Director, not the Commission, acts as the City's fiduciary agent in the management of the public funds allocated to the Commission by the Mayor and City Council each year;
- *Formal establishment of a steward for the City's art collection, a role the Commission has been fulfilling for 20 years;*
- Resources and labor saved through the establishment of the Commission as the single point of contact for the oversight of the City's art collection including processing art donations and loans, deaccessioning, maintenance, repair, conservation, operation, storage and exhibition of the City's art assets;
- Improved customer service for art donors, lenders and borrowers;



- An increase in the quality and, therefore, the value of the City's art collection;
- Accurate documentation of the City's art assets;
- Adherence to the standards of the Governmental Accounting Standard Board (GASB 34) and the City's *2004 Public Art Master Plan*;
- Clarified conflict of interest requirements for Commissioners;
- Clarified appointment methods, terms and qualifications for Commissioners.

#### FISCAL CONSIDERATIONS:

No costs will be incurred by approval of the proposed amendments. However, it is anticipated that the amendments may lead to improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets.

#### PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On June 25, 2008, the Committee on Rules, Open Government, and Intergovernmental Relations of the City Council voted to recommend approval of the staff recommendation and to refer this item to the City Council for consideration with additional "clean up" to the SDMC 26.0701 et. seq. amendments by the City Attorney. The City Attorney's recommendation for "clean up" language is attached.

San Diego Municipal Code Chapter 2: Government; Article 6: Board and Commissions; Division 7: Commission for Arts and Culture was added 5-15-1989 by O-17298 N.S. Amended, added and/or renumbered 4-20-1992, by O-17757 N.S.; 4-10-2000, by O-18786 N.S.; 5-17-2004, by O-19280 N.S.

#### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 18, 2008, the Commission voted to recommend to the Mayor and City Council approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On April 7, 2008, the Policy Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

On May 3, 2007, the Public Art Committee, a subcommittee of the Commission, voted to recommend to the Commission approval in concept of the proposed amendments to SDMC 26.0701 et. seq.

In addition, the research and development of the proposed amendments engaged the following individuals, groups and organizations:

- Deputy Chief of Community and Legislative Services
- City Attorney's staff
- Director, Major Gifts and Philanthropy Planning
- Executive Director, Commission for Arts and Culture and staff
- Visual Arts Librarian and Manager of the Library Department's Visual Arts Program

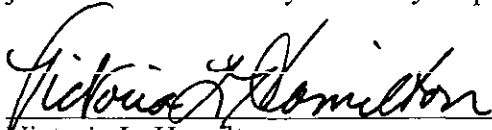
- Grants & Gifts Business Process Reengineering (BPR) Team
- Ethics Commission staff
- Purchasing and Contracting Department staff
- Other municipal governments nationwide
- National Public Art Network of Americans for the Arts

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

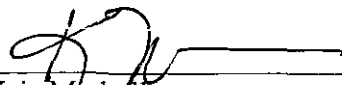
Key stakeholders include the Commission, the Executive Director and Commission staff as well as elected officials, City staff and San Diego's citizenry. Projected impacts may include improved fiscal accountability, resource conservation and preservation or an increase of the value of City-owned art assets. Increased labor associated with educating City staff about any new or amended duties and functions assigned to the Commission, the Executive Director and Commission staff may be possible.

The City's requirements, adopted in 2004, for the inclusion of art and/or cultural space in eligible private developments are not materially changed by these proposed amendments.

None of the proposed amendments shall be construed to limit or abridge the powers or exclusive jurisdiction of the City's Library Department over its Visual Arts Program.



Victoria L. Hamilton  
Executive Director, Commission for Arts  
and Culture



Kris Mitchell  
Deputy Chief for Community and  
Legislative Services

## CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 26.0701 THROUGH SECTION 26.0704; BY AMENDING AND RENUMBERING SECTION 26.0705 TO SECTION 26.0721, SECTION 26.0706 TO SECTION 26.0714, SECTION 26.0707 TO SECTION 26.0715, SECTION 26.0708 TO SECTION 26.0716, SECTION 26.0709 TO SECTION 26.0717, SECTION 26.0710 TO SECTION 26.0718, SECTION 26.0711 TO SECTION 26.0719 AND SECTION 26.0712 TO SECTION 26.0720; AND BY ADDING SECTION 26.0713 THROUGH SECTION 26.0728, ALL RELATING TO THE COMMISSION FOR ARTS AND CULTURE.

This ordinance makes changes to Chapter 2, Article 6 of the City of San Diego Municipal code by amending section 26.0701 through section 26.0704; by amending and renumbering section 26.0705 to section 26.0721, section 26.0706 to section 26.0714, section 26.0707 to section 26.0715, section 26.0708 to section 26.0716, section 26.0709 to section 26.0717, section 26.0710 to section 26.0718, section 26.0711 to section 26.0719 and section 26.0712 to section 26.0720; and by adding section 26.0713 through section 26.0728, all relating to the Commission for Arts and Culture [Commission].

These amendments and additions: (1) set forth and clarify the respective duties and functions of the Commission, the Executive Director, and Commission staff; (2) formally establish the Executive Director as the steward for the City's art collection; (3) improve

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the process for acquiring and documenting art; and (4) clarify conflict of interest requirements and appointment procedures for Commissioners.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, since a printed copy will be available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

SS:ao  
09/02/2008  
10/03/2008 COR.COPY  
Or.Dept: Commission for Arts and Culture  
O-2009-21

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 26.0701 THROUGH SECTION 26.0704; BY AMENDING AND RENUMBERING SECTION 26.0705 TO SECTION 26.0721, SECTION 26.0706 TO SECTION 26.0714, SECTION 26.0707 TO SECTION 26.0715, SECTION 26.0708 TO SECTION 26.0716, SECTION 26.0709 TO SECTION 26.0717, SECTION 26.0710 TO SECTION 26.0718, SECTION 26.0711 TO SECTION 26.0719 AND SECTION 26.0712 TO SECTION 26.0720; AND BY ADDING SECTION 26.0713 THROUGH SECTION 26.0728, ALL RELATING TO THE COMMISSION FOR ARTS AND CULTURE.

WHEREAS, Chapter 2, Article 6 of the City of San Diego Municipal Code establishes the Commission for Arts and Culture [Commission], and sets forth programs designed to enhance the City of San Diego through the encouragement and inclusion of Public Art; and

WHEREAS, on April 18, 2008, the Commission voted to recommend amendments and additions to Chapter 2, Article 6, which: (1) set forth and clarify the respective duties and functions of the Commission, the Executive Director, and Commission staff; (2) formally establish the Executive Director as the steward for the City's art collection; (3) improve the process for acquiring and documenting art; and (4) clarify conflict of interest requirements and appointment procedures for Commissioners; and

WHEREAS, on June 25, 2008, the Committee on Rules, Open Government, and Intergovernmental Relations [Rules Committee] of the City Council voted to approve the Commission's recommendations, subject to additional review and revisions as to form by the City Attorney; and

WHEREAS, this ordinance includes the amendments and additions to Chapter 2, Article 6 recommended by the Commission, approved by the Rules Committee, and reviewed and revised as to form by the City Attorney; NOW, THEREFORE

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article, 6, Division 7 of the San Diego Municipal Code is amended by amending section 26.0701 through section 26.0704 to read as follows:

**§26.0701 Purpose and Intent**

It is the purpose and intent of the City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor, City Council and City Manager on promoting, encouraging, and increasing support for the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

It is also the purpose and intent of the City Council to set forth the duties and functions of the Executive Director and staff that support the Commission for Arts and Culture, which include: developing, implementing, evaluating and/or recommending changes to public policy, legislation, programs, services and advocacy strategies; overseeing funding allocations in support of non-profit arts and culture organizations, artists, neighborhood arts programs, festivals, and artworks in public development; ensuring the inclusion of art in private development; managing artworks owned and controlled by the City; supporting cultural tourism and innovative arts and culture programming; and undertaking

other initiatives that contribute to the quality of life, the economic vitality, and the vibrancy of San Diego.

**§26.0702 Definitions**

Except as otherwise provided, the following definitions apply to the terms italicized in this division:

*Applicant* has the same meaning as stated in Land Development Code section 113.0103.

*Accession* means the formal process used to accept and record an *artwork* as a *Civic Art Collection* item.

*Acquisition* means the transfer of title to the City of valuable property including *artwork* by purchase, donation, bequest, transfer or exchange.

*Artist* means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or language arts, or a combination thereof, based on that professional practitioner's body of work, educational background, experience, past commissions, exhibition/performance record, publications, and production of *artworks*.

*Artworks* must be specified or designed by an *artist* and include:

*Public art* as defined herein;

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported, suspended, mounted, installed, kinetic, electronic or mechanical;

Murals or paintings: may be made of any material or combination of materials; may be made with traditional or non-traditional means;

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, linguistic expressions, calligraphy, ephemera, textiles, found objects, and any media or combination of media including audio, video, film, holographic or computer generated technologies, or other art genres currently known or which may come to be known; and

Tangible manifestations (i.e., CDs, DVDs, scripts, photographs, videos, films, scores, etc.) of choreography, theatrical performances, performance art, happenings, music, television and film or other performing or language art genres currently known or which may come to be known.



*Artworks* may be permanent, temporary, fixed, or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

**The following, unless specified or designed by an *artist*, are not considered *artworks*:**

Reproductions, by mechanical or other means, of original *artworks*. However, limited editions controlled by the *artist* or original prints, cast sculptures, or photographs, may be considered *artworks*.

Decorative, ornamental or functional elements not specified or designed by an *artist*.

Elements generally considered as being components of architecture or landscape design such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc.

Art objects which are mass produced, ordered from a catalog, or of standard design (such as benches or fountains); wayfinding or other functional elements such as graphics, signage, advertising or maps.

*Capital Improvements Program project* means any permanent public improvement project, or portion or phase thereof, set forth in the Capital Improvements Program budget as adopted by City Council.

*Civic Art Collection* means *artworks* which have been *accessioned* and are publicly owned, possessed, or controlled by the City and administered by the *Commission*. Incoming loans of *artwork* shall be incorporated into the *Civic Art Collection* for the duration of the loan but are not considered *acquisitions*.

*Civic Enhancement allocation* means the percentage of the *total building permit valuation* for a *qualifying development* in accordance with the requirements set forth herein which is set aside for *artwork* on the *premises*, venues for *cultural use* on the *premises* and/or an in-lieu contribution to the *Public Art Fund*.

*Collections management activities* include, but are not limited to, the *acquisition*, incoming loan, outgoing loan, interdepartmental loan, *deaccession*, *disposal*, relocation, removal, exhibition, operation, maintenance, conservation, documentation, storage, reproduction and/or adaptation of *artworks*.

*Commission* means the City of San Diego Commission for Arts and Culture.

*Cultural use* means *open and accessible* programming for the presentation of visual, performing and/or language arts.

*Deaccession* means the formal process used to permanently remove an *artwork* from the *Civic Art Collection*.

*Development* has the same meaning as stated in Land Development Code section 113.0103.

*Disposal* means the permanent exchange, sale, destruction or transfer of an *artwork* in the *Civic Art Collection*.

*Extraordinary artwork maintenance* means any maintenance or conservation to the sound condition of an *artwork* that requires specialized services.

*Open and accessible* means available for use by the general public during normal hours of business operation consistent with the operation and use of the *premises*.

*Ordinary artwork maintenance* means the routine oversight of the operation and cleaning of and around *artworks*.

*Premises* has the same meaning as stated in Land Development Code section 113.0103.

*Public art* means *artwork* acquired or created using funds appropriated by the City and located in *public places*.

*Public Art Fund* means a separate fund established in the City Treasury into which *Civic Enhancement allocations*; funding for *collections management activities*; funding for *public art project management activities*; monetary bequests and donations for specific or unspecified *cultural use*; grants; grant matching funds; and Transient Occupancy Tax [TOT] funds may be deposited.

*Public art project management activities* include, but are not limited to, *artist selection process activities*, payment of stipends to *artists* and consultant fees, community participation activities, outreach and educational activities, and implementation of communication tools such as interpretive plaques, project documentation, and staff administration of all of the above.

*Public places* means land and buildings owned or controlled by the City.

*Redevelopment Project Area* means any area formally adopted by the City Council pursuant to Community Redevelopment Law, California Health and Safety Code sections 33000 et. seq., maps of which are on file in the Office of the City Clerk.

*Redevelopment Agency Project* means any undertaking of the City of San Diego Redevelopment Agency in a *Redevelopment Project Area* pursuant to the authority vested in the Redevelopment Agency under California Health and Safety Code sections 33000 et. seq.

*Total building permit valuation* means the combined total valuation of all new structures, including tenant improvements within those new structures, within the premises, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

**§26.0703 Commission for Arts and Culture Established**

There is hereby established a Commission for Arts and Culture consisting of fifteen members, who shall serve without compensation.

The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven members; and 2) the Mayor shall appoint the remaining eight members, one each from a list of three nominations submitted by each Councilmember.

**§26.0704 Duties and Functions – Commission for Arts and Culture**

The *Commission* shall:

- (a) Advocate for the role and value of arts and culture in civic life.
- (b) Promote greater public participation in; and access to, arts and culture.
- (c) Evaluate the City's allocation of TOT funds for arts and culture and strongly advocate for increasing arts and culture funding to levels which measurably support the vitality and stability of established arts and cultural organizations and which foster an environment attractive to and nurturing of emerging arts and cultural organizations.
- (d) Advocate for and explore alternate sources of arts and culture funding including, but not limited to, grants, donations and corporate sponsorships.
- (e) Advise on the development, implementation, evaluation and/or change of the City's arts and culture public policy, legislation, programs and services.
- (f) Advocate for City public policy, legislation, programs and services that foster a wide range of arts and cultural offerings which engage a diverse public audience.
- (g) Review the annual proposed budget for the *Commission* as prepared by the Executive Director of the *Commission* and provide recommendations, as appropriate.
- (h) Advise on the administration of the budget for the *Commission*, and the arts and culture allocations within TOT funds including, but not limited to,

the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.

- (i) Oversee and, when appropriate, participate in an open and impartial process for evaluating TOT funding applications from local, non-profit arts and culture organizations.
- (j) Recommend to the Mayor, City Council and City Manager the fair distribution of TOT funds to non-profit arts and culture organizations to support local arts and culture programming.
- (k) Advise on *collections management activities* and *public art project management activities* pertaining to existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (l) Advise on allocations to and from the *Public Art Fund*.
- (m) Advise on the policies and processes whereby *artworks* are included in *Capital Improvements Program projects* and *Redevelopment Agency projects* and ensure that *artists* are involved as early as possible in the pre-design or design phases for each project.
- (n) Advocate for the fair distribution of arts and culture amenities across each City Council district and throughout the City's neighborhoods.

- (o) Participate in the initiation, implementation and/or sponsorship, alone or in partnership with other public agencies or private organizations, of programs and services to support local arts and culture organizations and individual *artists*.
- (p) Serve as the City's advocates for arts and culture within the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and other Pacific Rim countries.
- (q) Advise on other arts and culture issues as directed by the Mayor, City Council or City Manager.
- (r) Hold regular public meetings and keep written records of the proceedings which shall be public records.
- (s) Adopt rules consistent with laws for the governance of its business and procedures.

Section 2. That Chapter 2, Article 6 of the San Diego Municipal Code is amended by amending and renumbering section 26.0705 to section 26.0721, section 26.0706 to section 26.0714, section 26.0707 to section 26.0715, section 26.0708 to section 26.0716, section 26.0709 to section 26.0717, section 26.0710 to section 26.0718; section 26.0711 to section 26.0719; and section 26.0712 to section 26.0720; and amending section 26.0705 through section 26.0712 to read as follows:

**§26.0705      Qualification of Commissioners**



Commissioners shall be persons who represent the following: individual arts and culture patrons, *artists*, educators, the business and professional community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public. Efforts should be made to include Commissioners who represent a diversity of backgrounds including, but not limited to, gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, political affiliation and/or professional background. Commissioners also shall be persons who will commit to volunteering time to serve on the board which meets monthly, as well as on at least one *Commission* committee and one *Commission* review panel on an annual basis.

Board Chairs, Presidents, or other officers of the board of directors of an organization funded by the City through the *Commission* may not be considered for an appointment to the *Commission* or accept such a position while a Commissioner. A high-level, full-time employee of an organization funded by the *Commission* may not be considered for appointment to the *Commission* or accept such a position while a Commissioner. In selecting Commissioners, the Mayor or the Mayor's designee shall consider whether candidates would be able to effectively and ethically serve in light of any foreseeable conflicts of interest.

**§26.0706      Designation of Commission Chair and Vice Chair**

The Mayor may designate one member as Chair in September of each year in which a Chair is to be selected; however, in the absence of such designation, the *Commission* shall on or after October 15 of such year select from their members a Chair. The Chair shall take office no earlier than October and no later than December. The Vice Chair shall be nominated by the Chair and elected by a majority vote of the *Commission*.

**§26.0707 Commissioner Terms**

Commissioners shall serve two-year staggered terms for a maximum of eight consecutive years and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before an individual can be reappointed.

The expiration date of all terms shall be August 31.

The Chair shall serve a term of two years and can be designated as Chair by the Mayor for one additional, consecutive year. An interval of two years must pass before an individual can be reappointed as Chair.

The Vice Chair shall serve a term of one year and can be reelected as Vice Chair by the *Commission* for two additional, consecutive one-year terms. An interval of two years must pass before an individual can be reappointed as Vice Chair.

**§26.0708 Commission Meetings and Reporting**

The *Commission* will meet monthly and report to the Mayor and City Council on an as needed basis, but not less than one time per year.

**§26.0709      Resignation and Removal of Commissioners**

Any Commissioner may submit written resignation to the Chair. The Commissioner resigning must file a Leaving Office Statement with the City Clerk within thirty days of the effective date of resignation. It is the Chair's responsibility to notify the Mayor of any such resignation.

The *Commission* may recommend to the Mayor that an individual Commissioner be removed for sufficient cause.

**§26.0710      Commission Quorum**

Eight Commissioners shall constitute a quorum authorized to transact business.

**§26.0711      Commission Conflict of Interest Code**

A conflict of interest code shall be adopted for Commissioners, subject to City Council approval pursuant to Chapter 2, Article 6, Division 1 of this code. All Commissioners shall be required to complete and file statements of economic

interests in accordance with the conflict of interest code, and shall comply with all applicable ethics laws.

**§26.0712 Commission for Arts and Culture Executive Director and Staff**

The Executive Director of the *Commission* shall be appointed by the City Manager. The Director shall be a management assistant to the City Manager. The City Manager shall provide appropriate staff to support the activities of the *Commission* and Executive Director.

Section 3. That Chapter 2, Article 6, Division 7 of the San Diego Municipal Code is amended by adding section 26.0713 through section 26.0728 to read as follows:

**§26.0713 Duties and Functions – Executive Director**

The Executive Director shall:

- (a) Serve as the head of and be responsible for the administration of the *Commission*, *Commission* staff, and their respective purposes, duties and functions.
- (b) Appoint, direct and supervise all City employees on the *Commission* staff with the approval of the City Manager, and subject to Civil Service regulations.
- (c) Initiate, administer and propose modifications to such agreements and instruments as the Executive Director deems reasonably necessary to implement public policy, legislation, programs and services pertaining to

the *Commission*, *Commission* staff, and their respective purposes, duties and functions.

- (d) Prepare the annual proposed budget for the *Commission* and provide recommendations, as appropriate, to the *Commission* before submitting budget recommendations to the City Manager.
- (e) Direct the administration of the budget for the *Commission* and the arts and culture allocations within TOT funds including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.
- (f) Direct the fair distribution of TOT funds, as approved by City Council, to non-profit arts and culture organizations to support local arts and culture programming.
- (g) Serve as the steward of the *Civic Art Collection* and manage any financial transactions related to *collections management activities* and *public art project management activities* pertaining to all existing and proposed *artworks* in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (h) Oversee allocations to and from the *Public Art Fund*.
- (i) Initiate agreements to provide professional arts administration services to other agencies, corporations and companies.

- (j) Prepare and submit reports to the Mayor, City Council and City Manager pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (k) Consult with and submit reports to the *Commission* pertaining to the purpose, duties and functions of the *Commission* and the *Commission* staff.
- (l) Manage other duties pertaining to arts and culture as assigned by the City Manager.

**§26.0714 Civic Enhancement Allocation Regulations and Calculations**

- (a) To ensure that the City's increasing urbanization is offset by the creation of *artworks* and venues dedicated to *cultural use*, no final City approval to occupy any private industrial or commercial *development*, or any portion thereof, with a *total building permit valuation* greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless a *Civic Enhancement allocation* in an amount equal to one percent (when the *applicant* elects to meet the requirements of this section pursuant to Subdivision (b)(1) or (b)(2)) or one-half of one percent (when the *applicant* elects to meet the requirements of this section pursuant to

Subdivision (b)(3)) of its *total building permit valuation* has been set aside by the *applicant*, subject to the provisions of section 26.0716.

- (1) For phased *development*, calculation of *total building permit valuation* will be based on the total number of building permits applied for, but not yet issued, for the *premises*, but does not include any withdrawn permit applications.
  - (2) The valuation of any exempt component of a mixed use *development* shall be deducted from the combined *total building permit valuation*.
  - (3) The calculation of *total building permit valuation* shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire rated occupancy classification.
- (b) The *Civic Enhancement allocation* may be used by the *applicant* to comply with the requirements set forth herein through one of the following means:
- (1) Placement of *artworks* valuing one percent of the *total building permit valuation* for the *development* on the *premises*. If the value of the *artwork*, including art consultant fees and the costs for

design, fabrication, installation, and documentation, is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *artwork*.

- (2) Maintaining a portion of the *premises* which is *open and accessible* for *cultural use*. If the value of that portion of the *premises* which is *open and accessible* for *cultural use* is not equal to or greater than the *Civic Enhancement allocation*, the *applicant* shall pay into the *Public Art Fund* an amount equal to the difference between the amount of the *Civic Enhancement allocation* and the value of the *premises* which is *open and accessible* for *cultural use*.
- (3) Depositing into the *Public Art Fund*, payment of an in-lieu fee equal to one-half of one percent of the *total building permit valuation* for the *development*.

**§26.0715 Civic Enhancement Allocation Declaration**

Upon applying for a building permit, the *applicant* shall:

- (a) Declare in writing the means by which the *applicant* will comply with the requirements of section 26.0714; and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with section 26.0717.



**§26.0716 Compliance with Civic Enhancement Allocation Regulations**

- (a) If the *applicant* chooses to pay an in-lieu fee in accordance with the provisions of section 26.0714 (b)(3), no building permit for the *development* may be issued without payment of the in-lieu fee to the City's *Public Art Fund*.
- (b) If the *applicant* chooses to install an *artwork* on the *premises* or maintain a portion of the *premises open and accessible* for *cultural use* in accordance with the requirements of section 26.0714 (b)(1) or (b)(2), no building permit for the *development* may be issued until the *applicant* deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one-half of one percent of the *total building permit valuation*. Any costs associated with acquiring the required security are the responsibility of the *applicant*, and may not be applied to the *Civic Enhancement allocation*.
- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit to *Commission* staff evidence, satisfactory to the Executive Director of the *Commission*, that:
  - (1) If applicable, the value of the *artwork* installed on the *premises* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include the

costs of art consultant fees, *artist* design fees, fabrication of the *artwork*, installation of the *artwork*, and/or documentation of the *artwork*.

- (2) If applicable, the value of the portion of the *premises* which is maintained *open and accessible* for *cultural use* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the *development*.

**§26.0717 Declaration of Covenants, Conditions, and Restrictions for Developments  
Subject to the Civic Enhancement Allocation Regulations**

If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and accessible* for *cultural use* in accordance with the requirements of section 26.0714 (b)(1) or (b)(2), the *development* shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the *development* shall provide all necessary maintenance of the *artwork*, including preservation of the *artwork* in good condition to the reasonable satisfaction of the City and protection of the *artwork* against destruction, distortion, mutilation, or other modification. The owner of the

*premises* may retain ten percent of the *Civic Enhancement allocation* in order to fund the costs of conservation, ongoing maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements set forth herein.

- (b) The owner of the *development* shall ensure that the *artwork* will be located in an area that is *open and accessible*.
- (c) A description of that portion of the *premises* which will be maintained *open and accessible* and its designated *cultural use*.
- (d) Any other reasonable terms necessary to implement the provisions set forth herein.

**§26.0718      Return of Civic Enhancement Allocations**

- (a) *Civic Enhancement allocations* paid into the City's *Public Art Fund* which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the *Civic Enhancement allocations* is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the *development* for which the *Civic Enhancement allocation* was paid, and a statement that the person

making the request paid the *Civic Enhancement allocation* or is the current owner of the *development*.

(b) The City Council shall determine if return of the then unexpended portion of the *Civic Enhancement allocation* and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:

- (1) The City Council finds that the funds are needed for *artwork* or *cultural use*.
- (2) The *Civic Enhancement allocations* were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.
- (3) The administrative cost of refunding unexpended *Civic Enhancement allocations* exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the *development* in not less than three places.

**§26.0719 Failure to Maintain Artwork Created Through Civic Enhancement Allocations**

Failure to maintain *artworks* created through *Civic Enhancement allocations* may be a public nuisance.

**§26.0720 Civic Enhancement Allocation Appeal**

Any *applicant* may seek review of a decision by the Executive Director of the *Commission* under section 26.0716 (c) by filing an application for an appeal hearing with the Executive Director of the *Commission* no later than ten business days after the Executive Director's decision.

The Executive Director of the *Commission* shall coordinate a date for an appeal hearing before the City Manager or the City Manager's designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Executive Director. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The Certificate of Occupancy may be withheld pending resolution of the appeal.

At the conclusion of the appeal hearing, the City Manager or the City Manager's designee may affirm, reverse, or modify the Executive Director's decision. The decision of the City Manager is final.

**§26.0721 Civic Enhancement Allocation Exemptions**

The *Civic Enhancement allocation* requirements do not apply to the following:

- (a) Industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000 or current threshold pursuant to section 26.0716.
- (b) Any *premises* which has an institutional use, such as churches, hospitals, and schools.
- (c) Any *premises* which is used solely for residential *development*.
- (d) Any *premises* which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.
- (e) Industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to security reasons.
- (f) Industrial and commercial *development* that is not *open and accessible*, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

**§26.0722 Control of Artworks**

No *artworks* shall be contracted for, exhibited on, or erected on *public places*, or become the property of the City by *acquisition* or otherwise, or be in the custody of the City by loan or otherwise, unless such *artworks*, shall first have been submitted to and accepted by the *Commission* staff, and following review and recommendation by the *Commission*. No existing *artworks* owned by or in the

custody of the City shall be *deaccessioned*, removed, relocated, conserved, altered, exhibited or *disposed* of in any way without the approval of *Commission* staff, and following review and recommendation by the *Commission*.

**§26.0723 Management of Artworks**

All *collections management activities* shall be the responsibility of the *Commission* staff, and undertaken with the advice of the *Commission*. *Ordinary artwork maintenance* of *artworks* in the *Civic Art Collection* is the responsibility of the City department at which the *artwork* is sited and shall be undertaken at the direction of *Commission* staff.

**§26.0724 Acquisition of Artworks**

- (a) *Commission* staff may authorize the purchase of *artworks* for inclusion in the *Civic Art Collection* following the review and recommendation of the *Commission*.
- (b) *Commission* staff shall, on behalf of the City, accept, with or without conditions, or reject donations, bequests or incoming loans of *artwork* following the review and recommendation of the *Commission*. Title to all donated and bequeathed *artworks* accepted by the City and *accessioned* into the *Civic Art Collection* shall be vested and held in the name of the City.

**§26.0725 Deaccession and Disposal of Artworks**

- (a) *Commission* staff shall *deaccession* and *dispose* of *artworks* from the *Civic Art Collection*, following the review and recommendation of the *Commission*.
- (b) When an *artwork* to be *deaccessioned* and *disposed* of through sale has an estimated fair market value of \$250,000 or more, *Commission* staff shall submit a report on the recommendation for the sale to the Mayor, City Council and City Manager prior to initiating the sale.
- (c) When an *artwork* is *deaccessioned* and *disposed* of through sale, the *artwork* shall be sold through methods either administered by or approved by the Purchasing Agent. When an *artwork* is *deaccessioned* and *disposed* of through sale or exchange, the Executive Director may administer acceptance of all deeds of conveyance necessary and proper to affect a duly authorized sale or exchange.

**§26.0726      Loans from the Civic Art Collection**

*Commission* staff is authorized to loan *artworks* from the *Civic Art Collection* to City departments, agencies, institutions, organizations or galleries. Loans are made according to the terms and conditions of loan agreements.

**§26.0727      Reproductions or Adaptations of Artworks**

*Commission* staff is authorized to negotiate with the copyright holder for each *artwork* in or proposed for inclusion in the *Civic Art Collection* for the purpose of



acquiring a license to make, or cause to be made reproductions or adaptations of *artworks*. Reproductions or adaptations of *artworks* are made according to the terms and conditions of the licensing agreement.

**§26.0728 Proceeds from the Sale, Loan, Reproduction or Adaptation of Artworks**

All monies received from the sale of *artworks* from the *Civic Art Collection* must be expended on new *acquisitions* for the *Civic Art Collection*. Proceeds from the loan of *artworks* from the *Civic Art Collection* or from the licensing of the making of reproductions or adaptations thereof, less any payments due, shall be deposited into the *Public Art Fund*.

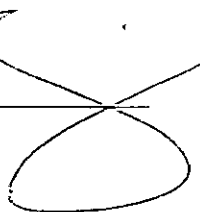
Section 4. That a full reading of this ordinance is dispensed with prior to its passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Sanna R. Singer  
Deputy City Attorney



SRS:ao:js  
09/02/08  
10/03/08 COR.COPY  
Or.Dept: Commission for Arts and Culture  
O-2009-21

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San  
Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND

City Clerk

By \_\_\_\_\_

Deputy City Clerk

Approved: \_\_\_\_\_

(date)

\_\_\_\_\_

JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_

(date)

\_\_\_\_\_

JERRY SANDERS, Mayor

## STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~NEW LANGUAGE: Redline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 26.0701 THROUGH SECTION 26.0704; BY AMENDING AND RENUMBERING SECTION 26.0705 TO SECTION 26.0721, SECTION 26.0706 TO SECTION 26.0714, SECTION 26.0707 TO SECTION 26.0715, SECTION 26.0708 TO SECTION 26.0716, SECTION 26.0709 TO SECTION 26.0717, SECTION 26.0710 TO SECTION 26.0718, SECTION 26.0711 TO SECTION 26.0719 AND SECTION 26.0712 TO SECTION 26.0720; AND BY ADDING SECTION 26.0713 THROUGH SECTION 26.0728, ALL RELATING TO THE COMMISSION FOR ARTS AND CULTURE.

[Note: Chapter 2, Article, 6, Division 7 of the San Diego Municipal Code is amended by amending section 26.0701 through section 26.0704 to read as follows:]

**§26.0701 Purpose and Intent**

It is the purpose and intent of the City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor, City Council and City Manager on promoting, encouraging, and increasing support for the region's artistic and cultural assets, integrating arts and culture into community life and showcasing San Diego as an international tourist destination.

It is also the purpose and intent of the City Council to ~~encourage the preservation and augmentation of the City of San Diego's cultural and artistic resources, and to ensure that the City's increasing urbanization is offset by the creation of artworks and venues dedicated to artistic performances, exhibitions, and cultural events.~~ set forth the duties and functions of the Executive Director and staff that support the Commission for Arts and Culture, which include: developing, implementing, evaluating and/or recommending changes to public policy, legislation, programs, services and advocacy strategies; overseeing funding allocations in support of non-profit arts and culture organizations, artists, neighborhood arts programs, festivals, and artworks in public development; ensuring the inclusion of art in private development; managing artworks owned and controlled by the City; supporting cultural tourism and innovative arts and culture programming; and

undertaking other initiatives that contribute to the quality of life, the economic vitality, and the vibrancy of San Diego.

## §26.0702 Definitions

Except as otherwise provided, for the purposes of the following definitions apply to the terms italicized in this division:

*Applicant* has the same meaning as stated in Land Development Code section 113.0103.

*Accession* means the formal process used to accept and record an *artwork* as a *Civic Art Collection* item.

*Acquisition* means the transfer of title to the City of valuable property including *artwork* by purchase, donation, bequest, transfer or exchange.

*Artist* means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of language arts, or a combination thereof, based on that professional practitioner's body of work, educational background, experience, public performances, past public commissions, exhibition/performance record, publications, and production of artworks.

*Artworks* must be specified or designed by an *artist* and includes:

*Public art* as defined herein:

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported or suspended, mounted, installed, kinetic, electronic or mechanical;

Murals or paintings: may be made of any material or variety combination of materials; with or without collage; may be made with traditional or non-traditional means;

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary-linguistic expressions, calligraphy, ephemera, textiles, found objects, and any media or combination of forms media, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies, or new other art genres currently known or which may come to be known; and

Tangible manifestations (i.e., CDs, DVDs, scripts, photographs, videos, films, scores, etc.) of choreography, theatrical performances, performance

art, happenings, music, television and film or other performing or language art genres currently known or which may come to be known.

~~Artworks~~ as defined herein may be permanent, ~~fixed,~~ temporary, temporary ~~fixed,~~ or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

**The following, unless specified or designed by an artist, are not considered artworks:**

Reproductions, by mechanical or other means, of original artworks. However, limited editions controlled by the artist or original prints, cast sculptures, or photographs, may be considered artworks.

Decorative, ornamental or functional elements not specified or designed by an artist.

Elements generally considered as being components of architecture or landscape design such as vegetative materials, pools, paths, benches, receptacles, fixtures, planters, etc.

Art objects which are mass produced, ordered from a catalog, or of standard design (such as benches or fountains); wayfinding or other functional elements such as graphics, signage, advertising or maps.

Capital Improvements Program project means any permanent public improvement project paid for wholly by monies appropriated by the City to construct, improve, or renovate a building, including its appurtenant facilities, a decorative or commemorative structure, a park, a sidewalk, a parking facility, a utility, or any portion thereof, within the City limits or under the jurisdiction of the City, or portion or phase thereof, set forth in the Capital Improvements Program budget as adopted by City Council.

Civic Art Collection means artworks which have been accessioned and are publicly owned, possessed, or controlled by the City and administered by the Commission. Incoming loans of artwork shall be incorporated into the Civic Art Collection for the duration of the loan but are not considered acquisitions.

Civic Enhancement allocation means the percentage of the total building permit valuation for a qualifying development in accordance with the requirements set forth herein which is set aside for artwork on the premises, venues for cultural use on the premises and/or an in-lieu contribution to the Public Art Fund.

Collections management activities include, but are not limited to, the acquisition, incoming loan, outgoing loan, interdepartmental loan, deaccession, disposal, relocation, removal, exhibition, operation, maintenance, conservation, documentation, storage, reproduction and/or adaptation of artworks.

*Commission* means the City of San Diego Commission for Arts and Culture.

~~Cultural use~~ includes individual and group presentations, exhibitions, or ~~public performances~~ involving music, dance, theatre, opera, literature, sculpture, murals, paintings, earthworks, mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies means open and accessible programming for the presentation of visual, performing and/or language arts.

Deaccession means the formal process used to permanently remove an artwork from the Civic Art Collection.

*Development* has the same meaning as stated in Land Development Code section 113.0103.

Disposal means the permanent exchange, sale, destruction or transfer of an artwork in the Civic Art Collection.

Extraordinary artwork maintenance means any maintenance or conservation to the sound condition of an artwork that requires specialized services.

*Open and freely accessible* means available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.

Ordinary artwork maintenance means the routine oversight of the operation and cleaning of and around artworks.

*Premises* has the same meaning as stated in Land Development Code section 113.0103.

~~Public art program~~ includes all responsibilities and activities of the *Commission* in accordance with Chapter 2, Article 6, Division 7 pertaining to *public art*.

*Public art* means artwork that is created using funds from the public art fund and is acquired or created using funds appropriated by the City and located in public places.

~~Public art program allocation means the percentage of the total building permit valuation for a qualifying development in accordance with Chapter 2, Article 6, Division 7 which is set aside for the City's public art program.~~

~~Public Art Fund~~ means a separate fund established in the City Treasury into which funds allocated in accordance with Chapter 2, Article 6, Division 7 shall be deposited. Civic Enhancement allocations; funding for collections management activities; funding for public art project management activities; monetary bequests and donations for specific or unspecified cultural use; grants; grant matching funds; and Transient Occupancy Tax [TOT] funds may be deposited.

~~Public performances includes individual and group presentations of music, dance, theatre, opera, literary, film/video and other forms of art generally recognized.~~

Public art project management activities include, but are not limited to, artist selection process activities, payment of stipends to artists and consultant fees, community participation activities, outreach and educational activities, and implementation of communication tools such as interpretive plaques, project documentation, and staff administration of all of the above.

~~Public places means land and buildings owned or controlled by the City of San Diego.~~

Redevelopment Project Area means any area formally adopted by the City Council pursuant to Community Redevelopment Law, California Health and Safety Code sections 33000 et. seq., maps of which are on file in the Office of the City Clerk.

Redevelopment Agency Project means any undertaking of the City of San Diego Redevelopment Agency in a Redevelopment Project Area pursuant to the authority vested in the Redevelopment Agency under California Health and Safety Code sections 33000 et. seq.

~~Total building permit valuation means the combined total valuation of all new structures, including tenant improvements within those new structures, within the premises, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.~~

## §26.0703

### Commission for Arts and Culture Established

There is hereby established a Commission for Arts and Culture consisting of fifteen members: who shall serve without compensation. ~~Commission members shall be persons who represent the following: individual artists, arts and culture~~

~~patrons, educators, the business community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public.~~

~~The members shall serve two year staggered terms for a maximum of eight consecutive years, and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before such persons may be reappointed. The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven members; and; 2) the Mayor shall appoint the remaining eight members, one each from a list of three nominations submitted by each Councilmember. The expiration date of all terms shall be August 31. During September of each year, the Mayor may designate one member as chairperson; however, in the absence of such designation, the Commission shall on or after October 15 select from their members a chairperson. The Commission shall meet not less than monthly and report to the Mayor and Council on an as needed basis, but not less than one time per year.~~

~~The Commission shall adopt rules consistent with laws for the government of its business and procedures.~~

#### §26.0704

#### **Duties and Functions – Commission for Arts and Culture**

The *Commission* shall:

- (a) ~~Strongly advocate a substantial increase in funds for arts and culture. Advocate for the role and value of arts and culture in civic life.~~
- (b) ~~Make all funding recommendations directly to the Mayor, City Council and City Manager. Promote greater public participation in, and access to, arts and culture.~~
- (c) ~~Explore new sources of funding for arts and culture and evaluate the current allocation of Transient Occupancy Tax funding as it pertains to arts and culture. Evaluate the City's allocation of TOT funds for arts and culture and strongly advocate for increasing arts and culture funding to levels which measurably support the vitality and stability of established arts and cultural organizations and which foster an environment attractive to and nurturing of emerging arts and cultural organizations.~~
- (d) ~~Develop, coordinate and regularly reevaluate the City's arts and culture policies. Advocate for and explore alternate sources of arts and culture funding including, but not limited to, grants, donations and corporate sponsorships.~~
- (e) ~~Consistent with City Council policy, serve as advocates for arts and culture with the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico,~~



- ~~Canada, Japan and Pacific Rim countries. Advise on the development, implementation, evaluation and/or change of the City's arts and culture public policy, legislation, programs and services.~~
- (f) ~~Serve as the State/Federal local arts program partner. Advocate for City public policy, legislation, programs and services that foster a wide range of arts and cultural offerings which engage a diverse public audience.~~
  - (g) ~~Manage the City's public art program, which shall include the following: Review the annual proposed budget for the Commission as prepared by the Executive Director of the Commission and provide recommendations, as appropriate.~~
    - (1) ~~Advising on the acquisition, placement and maintenance of public art on property of the City of San Diego. No public art shall be installed or existing work of public art removed from public places without a review by the Commission.~~
    - (2) ~~Developing and recommending to the Mayor, City Council and City Manager as appropriate:~~
      - (A) ~~Programs to promote public performances and the public exhibition of the visual, performing, and literary arts.~~
      - (B) ~~Legislation to provide opportunities for inclusion of the visual, performing, and literary arts in private development.~~
      - (C) ~~Legislation and policies to include public art in selected Capital Improvements Program projects.~~
  - (h) ~~Receive and accept applications for Transient Occupancy Tax funding, and using objective criteria evaluate the applications and recommend to the Mayor, City Council, and City Manager the allocation of that funding. Advise on the administration of the budget for the Commission, and the arts and culture allocations within TOT funds including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.~~
  - (i) ~~Recommend for the City Manager's review a budget for funding arts and culture programs in the City. Oversee and, when appropriate, participate in an open and impartial process for evaluating TOT funding applications from local, non-profit arts and culture organizations.~~
  - (j) ~~Establish guidelines to carry out the public art program which shall include methods of selecting artists or public art and for the placement of public art. Recommend to the Mayor, City Council and City Manager the fair distribution of TOT funds to non-profit arts and culture organizations to support local arts and culture programming.~~

- (k) ~~Advise the City Council regarding the possible purchase of *public art* or commissioning the design, execution or placement of *public art*. The *Commission* shall work with the City Manager regarding the design, execution or placement of *public art* in connection with *Capital Improvements Program projects on collections management activities and public art project management activities* pertaining to existing and proposed artworks in/proposed for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.~~
- (l) ~~In the placement of *public art* in the City, give special attention to the placement of appropriate *public art* in City neighborhoods. Advise on allocations to and from the *Public Art Fund*.~~
- (m) ~~Receive input from the City Manager regarding operation and maintenance expenses associated with a work of *public art*. If the City Manager finds that a proposed work of *public art* requires extraordinary operation or maintenance expenses, the *Commission* shall recommend another work of *public art*, or submit with its recommendation to the City Manager and City Council a statement of overriding consideration of why the *public art* should be utilized notwithstanding its extraordinary operation or maintenance expense. Advise on the policies and processes whereby artworks are included in *Capital Improvements Program projects* and *Redevelopment Agency projects* and ensure that *artists* are involved as early as possible in the pre-design or design phases for each project.~~
- (n) ~~In cooperation with the City Manager, establish and adopt policies and procedures to implement the requirements of Chapter 2, Article 6; Division 7. Advocate for the fair distribution of arts and culture amenities across each City Council district and throughout the City's neighborhoods.~~
- (o) ~~Where a work of *public art* is to be included in the construction of a *Capital Improvements Program project*, facilitate cooperation and early project coordination between City staff and *artists*. Participate in the initiation, implementation and/or sponsorship, alone or in partnership with other public agencies or private organizations, of programs and services to support local arts and culture organizations and individual *artists*.~~
- (p) Serve as the City's advocates for arts and culture within the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and other Pacific Rim countries.
- (q) Advise on other arts and culture issues as directed by the Mayor, City Council or City Manager.
- (r) Hold regular public meetings and keep written records of the proceedings which shall be public records.

- (s) Adopt rules consistent with laws for the governance of its business and procedures.

[Note: Chapter 2, Article 6 of the San Diego Municipal Code is amended by amending and renumbering section 26.0705 to section 26.0721, section 26.0706 to section 26.0714, section 26.0707 to section 26.0715, section 26.0708 to section 26.0716, section 26.0709 to section 26.0717, section 26.0710 to section 26.0718, section 26.0711 to section 26.0719 and section 26.0712 to section 26.0720; and amending section 26.0705 through section 26.0712 to read as follows:]

**§26.0705 — Exemptions**

The requirements of Chapter 2, Article 6, Division 7 do not apply to the following:

- (a) ~~Industrial and commercial development with a total building permit valuation of less than \$5,000,000.~~
- (b) ~~Any premises which has an institutional use, such as churches, hospitals, and schools.~~
- (c) ~~Any premises which is used solely for residential development.~~
- (d) ~~Any premises which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.~~
- (e) ~~Industrial and commercial development that is not open or accessible, in its entirety, to the general public due to national security reasons.~~
- (f) ~~Industrial and commercial development that is not open or accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.~~

**§26.0705 — Qualification of Commissioners**

Commissioners shall be persons who represent the following: individual arts and culture patrons, artists, educators, the business and professional community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public. Efforts should be made to include Commissioners who represent a diversity of backgrounds including, but not limited to, gender, age, socio-economic class, geographic location, religion, sexual orientation, skills and abilities, ethnicity, political affiliation and/or professional background. Commissioners also shall be persons who will commit

to volunteering time to serve on the board which meets monthly, as well as on at least one *Commission* committee and one *Commission* review panel on an annual basis.

Board Chairs, Presidents, or other officers of the board of directors of an organization funded by the City through the *Commission* may not be considered for an appointment to the *Commission* or accept such a position while a Commissioner. A high-level, full-time employee of an organization funded by the *Commission* may not be considered for appointment to the *Commission* or accept such a position while a Commissioner. In selecting Commissioners, the Mayor or the Mayor's designee shall consider whether candidates would be able to effectively and ethically serve in light of any foreseeable conflicts of interest.

#### **§26.0706 — General Public Art Program Allocation Regulations**

- (a) Subject to the provisions of Section 26.0708, ~~no final City approval to occupy any private industrial or commercial development, or any portion thereof, with a total building permit valuation greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News-Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless an amount equal to one percent of its total building permit valuation has been set aside by the applicant as a public art program allocation~~
  - (1) ~~For phased development, calculation of total building permit valuation will be based on the total number of building permits applied for, but not yet issued, for the premises, but does not include any withdrawn permit applications.~~
  - (2) ~~The valuation of any exempt component of a mixed-use development shall be deducted from the combined total valuation.~~
  - (3) ~~The calculation of total valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire-rated occupancy classification.~~
- (b) ~~The public art program allocation may be used by the applicant to comply with the requirements of Chapter 2, Article 6, Division 7 through one of the following means:~~
- (c) ~~Placement of artwork on the premises. If the value of the artwork, including its design, fabrication, and installation costs is not equal to or greater than the public art program allocation, the applicant shall pay an in-lieu fee equal to the difference between the amount of the public art program allocation and the value of the artwork. Maintaining a portion of~~

~~the premises open and freely accessible for a cultural use. If the value of that portion of the premises which is open and freely accessible for a cultural use is not equal to or greater than the public art program allocation, the applicant shall pay an in lieu fee equal to the difference between the amount of the public art program allocation and the value of the premises which is open and freely accessible for a cultural use.~~

- (d) ~~Payment of an in lieu fee equal to one-half of one percent of the total building permit valuation for the development.~~

#### §26.0706      **Designation of Commission Chair and Vice Chair**

The Mayor may designate one member as Chair in September of each year in which a Chair is to be selected; however, in the absence of such designation, the Commission shall on or after October 15 of such year select from their members a Chair. The Chair shall take office no earlier than October and no later than December. The Vice Chair shall be nominated by the Chair and elected by a majority vote of the Commission.

#### §26.0707      **Public Art Program Allocation Procedures**

~~Upon application for a building permit, the applicant shall be informed of the public art program allocation requirements and referred to the Commission in order to:~~

- (a) ~~Declare in writing the means by which the applicant will comply with the requirements of Section 26.0706; and~~
- (b) ~~Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0709.~~

#### §26.0707      **Commissioner Terms**

Commissioners shall serve two-year staggered terms for a maximum of eight consecutive years, and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before an individual can be reappointed.

The expiration date of all terms shall be August 31.

The Chair shall serve a term of two years and can be designated as Chair by the Mayor for one additional, consecutive year. An interval of two years must pass before an individual can be reappointed as Chair.

The Vice Chair shall serve a term of one year and can be reelected as Vice Chair by the *Commission* for two additional, consecutive one-year terms. An interval of two years must pass before an individual can be reappointed as Vice Chair.

**§26.0708 — General Rules for Public Art Program Allocation Regulations**

- (a) If the applicant pays an in-lieu fee in accordance with the provisions of Section 26.0706(e), no building permit for the development may be issued without payment of the in-lieu fee to the City of San Diego.
- (b) If the applicant installs an artwork on the premises or maintains a portion of the premises open and freely accessible for a cultural use in accordance with the requirements of Section 26.0706(e) or (d), no building permit for the development may be issued until the applicant deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one half of one percent of the total building permit valuation.
- (c) Prior to issuance of the Certificate of Occupancy for the development, the applicant shall submit evidence, satisfactory to the Executive Director of the Commission, that:
  - (1) If applicable, the value of the artwork installed on the premises is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include the costs of artist design fees, fabrication of the artwork, and installation of the artwork.
  - (2) If applicable, the value of the portion of the premises which is maintained open and freely accessible for a cultural use is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the development.

**§26.0708 — Commission Meetings and Reporting**

The *Commission* will meet monthly and report to the Mayor and City Council on an as needed basis, but not less than one time per year.

**§26.0709 — Declaration of Covenants, Conditions, and Restrictions**

If the applicant installs an artwork on the premises or maintains a portion of the premises open and freely accessible for a cultural use in accordance with the requirements of Section 26.0706(c) or (d), the development shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the development shall provide all necessary maintenance of the artwork, including preservation of the artwork in good condition to the reasonable satisfaction of the City and protection of the artwork against destruction, distortion, mutilation, or other modification. The owner of the premises may retain ten percent of the public art program allocation in order to fund the costs of ongoing repair, conservation, maintenance, insurance, and security of the artwork, as necessary to comply with the requirements of Chapter 2, Article 6, Division 7.
- (b) The owner of the development shall ensure that the artwork will be located in an area that is open and freely accessible.
- (c) A description of that portion of the premises which will be maintained open and freely accessible and its designated cultural use.
- (d) Any other reasonable terms necessary to implement the provisions of Chapter 2, Article 6, Division 7.

#### §26.0709      Resignation and Removal of Commissioners

Any Commissioner may submit written resignation to the Chair. The Commissioner resigning must file a Leaving Office Statement with the City Clerk within thirty days of the effective date of resignation. It is the Chair's responsibility to notify the Mayor of any such resignation. The Commission may recommend to the Mayor that an individual Commissioner be removed for sufficient cause.

#### §26.0710      Return of Fees

- (a) Fees paid to the City of San Diego which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the development, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the fees is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the development for which the fee was paid, and a statement that the person making the request is the fee payer or the current owner of the development.

- (b) ~~The City Council shall determine if return of the then unexpended portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:~~
- (1) ~~The City Council finds that the fee is needed for the public art program.~~
  - (2) ~~Funds were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.~~
  - (3) ~~The administrative cost of refunding unexpended fees in accordance with the requirements of Section 26.0710(a) exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the development in not less than three places.~~

**§26.0710 Commission Quorum**

Eight Commissioners shall constitute a quorum authorized to transact business.

**§26.0711 Failure to Maintain Artwork**

~~Failure to maintain artwork in accordance with Chapter 2, Article 6, Division 7 is declared to be a public nuisance.~~

**§26.0711 Commission Conflict of Interest Code**

A conflict of interest code shall be adopted for Commissioners, subject to City Council approval pursuant to Chapter 2, Article 6, Division 1 of this code. All Commissioners shall be required to complete and file statements of economic interests in accordance with the conflict of interest code, and shall comply with all applicable ethics laws.

**§26.0712 Appeal**

~~Any applicant may seek review of a decision by the Commission under Section 26.0708(c) of Chapter 2, Article 6, Division 7 by filing an application for an appeal hearing with the Executive Director of the Commission no later than ten business days after the Commission's decision.~~

~~The Executive Director of the Commission shall coordinate a date for an appeal hearing before the City Manager or his designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Commission. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The certificate of occupancy may be withheld pending resolution of the appeal.~~



~~At the conclusion of the appeal hearing, the City Manager or his designee may affirm, reverse, or modify the Commission's decision. The decision of the City Manager is final.~~

**§26.0712 Commission for Arts and Culture Executive Director and Staff**

The Executive Director of the Commission shall be appointed by the City Manager. The Director shall be a management assistant to the City Manager. The City Manager shall provide appropriate staff to support the activities of the Commission and Executive Director.

[Note: Chapter 2, Article 6, Division 7 of the San Diego Municipal Code is amended by adding section 26.0713 through section 26.0728 to read as follows:]

**§26.0713 Duties and Functions – Executive Director**

The Executive Director shall:

- (a) Serve as the head of and be responsible for the administration of the Commission, Commission staff, and their respective purposes, duties and functions.
- (b) Appoint, direct and supervise all City employees on the Commission staff with the approval of the City Manager, and subject to Civil Service regulations.
- (c) Initiate, administer and propose modifications to such agreements and instruments as the Executive Director deems reasonably necessary to implement public policy, legislation, programs and services pertaining to the Commission, Commission staff, and their respective purposes, duties and functions.
- (d) Prepare the annual proposed budget for the Commission and provide recommendations, as appropriate, to the Commission before submitting budget recommendations to the City Manager.
- (e) Direct the administration of the budget for the Commission and the arts and culture allocations within TOT funds including, but not limited to, the Special Promotional TOT Revenue and the Arts, Culture and Community Festivals category.
- (f) Direct the fair distribution of TOT funds, as approved by City Council, to non-profit arts and culture organizations to support local arts and culture programming.

- (g) Serve as the steward of the *Civic Art Collection* and manage any financial transactions related to *collections management activities* and *public art project management activities* pertaining to all existing and proposed *artworks in/proposed* for the *Civic Art Collection*, or contracted for, exhibited on, or erected on *public places*.
- (h) Oversee allocations to and from the *Public Art Fund*.
- (i) Initiate agreements to provide professional arts administration services to other agencies, corporations and companies.
- (j) Prepare and submit reports to the Mayor, City Council and City Manager pertaining to the purpose, duties and functions of the *Commission* and the *Commission staff*.
- (k) Consult with and submit reports to the *Commission* pertaining to the purpose, duties and functions of the *Commission* and the *Commission staff*.
- (l) Manage other duties pertaining to arts and culture as assigned by the City Manager.

**§26.0714****Civic Enhancement Allocation Regulations and Calculations**

- (a) To ensure that the City's increasing urbanization is offset by the creation of artworks and venues dedicated to cultural use, no final City approval to occupy any private industrial or commercial development, or any portion thereof, with a total building permit valuation greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless a Civic Enhancement allocation in an amount equal to one percent (when the applicant elects to meet the requirements of this section pursuant to Subdivision (b)(1) or (b)(2)) or one-half of one percent (when the applicant elects to meet the requirements of this section pursuant to Subdivision (b)(3)) of its total building permit valuation has been set aside by the applicant, subject to the provisions of section 26.0716.
  - (1) For phased development, calculation of total building permit valuation will be based on the total number of building permits applied for, but not yet issued, for the premises, but does not include any withdrawn permit applications.
  - (2) The valuation of any exempt component of a mixed use development shall be deducted from the combined total building permit valuation.

- (3) The calculation of total building permit valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire rated occupancy classification.
- (b) Civic Enhancement allocation may be used by the applicant to comply with the requirements set forth herein through one of the following means:
- (1) Placement of artworks valuing one percent of the total building permit valuation for the development on the premises. If the value of the artwork, including art consultant fees and the costs for design, fabrication, installation, and documentation, is not equal to or greater than the Civic Enhancement allocation, the applicant shall pay into the Public Art Fund an amount equal to the difference between the amount of the Civic Enhancement allocation and the value of the artwork
- (2) Maintaining a portion of the premises which is open and accessible for cultural use. If the value of that portion of the premises which is open and accessible for cultural use is not equal to or greater than the Civic Enhancement allocation, the applicant shall pay into the Public Art Fund an amount equal to the difference between the amount of the Civic Enhancement allocation and the value of the premises which is open and accessible for cultural use.
- (3) Depositing into the Public Art Fund, payment of an in-lieu fee equal to one-half of one percent of the total building permit valuation for the development.

**§26.0715 Civic Enhancement Allocation Declaration**

Upon applying for a building permit, the applicant shall:

- (a) Declare in writing the means by which the applicant will comply with the requirements of section 26.0714; and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with section 26.0717.

**§26.0716 Compliance with Civic Enhancement Allocation Regulations**

- (a) If the applicant chooses to pay an in-lieu fee in accordance with the provisions of section 26.0714 (b)(3), no building permit for the development may be issued without payment of the in-lieu fee to the City's Public Art Fund.
- (b) If the applicant chooses to install an artwork on the premises or maintain a portion of the premises open and accessible for a cultural use in accordance with the requirements of section 26.0714 (b)(1) or (b)(2), no building permit for the development may be issued until the applicant deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one-half of one percent of the total building permit valuation. Any costs associated with acquiring the required security are the responsibility of the applicant, and may not be applied to the Civic Enhancement allocation.
- (c) Prior to issuance of the Certificate of Occupancy for the development, the applicant shall submit to Commission staff evidence, satisfactory to the Executive Director of the Commission, that:
  - (1) If applicable, the value of the artwork installed on the premises is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include the costs of art consultant fees, artist design fees, fabrication of the artwork, installation of the artwork, and/or documentation of the artwork.
  - (2) If applicable, the value of the portion of the premises which is maintained open and accessible for cultural use is equal to or greater than one percent of the total building permit valuation for the development. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the development.

**§26.0717****Declaration of Covenants, Conditions, and Restrictions for Developments Subject to the Civic Enhancement Allocation Regulations**

If the applicant installs an artwork on the premises or maintains a portion of the premises open and accessible for cultural use in accordance with the requirements of section 26.0714 (b)(1) or (b)(2), the development shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the development shall provide all necessary maintenance of the artwork, including preservation of the artwork in good condition to the reasonable satisfaction of the City and protection of the artwork against destruction, distortion, mutilation, or other modification. The owner of the premises may retain ten percent of the Civic Enhancement allocation in order to fund the costs of conservation, ongoing maintenance, insurance, and security of the artwork, as necessary to comply with the requirements set forth herein.
- (b) The owner of the development shall ensure that the artwork will be located in an area that is open and accessible.
- (c) A description of that portion of the premises which will be maintained open and accessible and its designated cultural use.
- (d) Any other reasonable terms necessary to implement the provisions set forth herein.

**§26.0718 Return of Civic Enhancement Allocations**

- (a) Civic Enhancement allocations paid into the City's Public Art Fund which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the development, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the Civic Enhancement allocations is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and method of payment, the location of the development for which the Civic Enhancement allocation was paid, and a statement that the person making the request paid the Civic Enhancement allocation or is the current owner of the development.
- (b) The City Council shall determine if return of the then unexpended portion of the Civic Enhancement allocation and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:
  - (1) The City Council finds that the funds are needed for artwork or cultural use.
  - (2) The Civic Enhancement allocations were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.

- (3) The administrative cost of refunding unexpended Civic Enhancement allocations exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the development in not less than three places.

**§26.0719 Failure to Maintain Artwork Created Through Civic Enhancement Allocations**

Failure to maintain artworks created through Civic Enhancement allocations may be a public nuisance.

**§26.0720 Civic Enhancement Allocation Appeal**

Any applicant may seek review of a decision by the Executive Director of the Commission under section 26.0716 (c) by filing an application for an appeal hearing with the Executive Director of the Commission no later than ten business days after the Executive Director's decision.

The Executive Director of the Commission shall coordinate a date for an appeal hearing before the City Manager or the City Manager's designee no later than ten business days after the date on which an application for the appeal hearing is filed with the Executive Director. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The Certificate of Occupancy may be withheld pending resolution of the appeal.

At the conclusion of the appeal hearing, the City Manager or the City Manager's designee may affirm, reverse, or modify the Executive Director's decision. The decision of the City Manager is final.

**§26.0721 Civic Enhancement Allocation Exemptions**

The Civic Enhancement allocation requirements do not apply to the following:

- (a) Industrial and commercial development with a total building permit valuation of less than \$5,000,000 or current threshold pursuant to section 26.0716.
- (b) Any premises which has an institutional use, such as churches, hospitals, and schools.
- (c) Any premises which is used solely for residential development.
- (d) Any premises which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.

- (e) Industrial and commercial development that is not open and accessible, in its entirety, to the general public due to security reasons.
- (f) Industrial and commercial development that is not open and accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

#### §26.0722 Control of Artworks

No artworks shall be contracted for, exhibited on, or erected on public places, or become the property of the City by acquisition or otherwise, or be in the custody of the City by loan or otherwise, unless such artworks, shall first have been submitted to and accepted by the Commission staff, and following review and recommendation by the Commission. No existing artworks owned by or in the custody of the City shall be deaccessioned, removed, relocated, conserved, altered, exhibited or disposed of in any way without the approval of Commission staff, and following review and recommendation by the Commission.

#### §26.0723 Management of Artworks

All collections management activities shall be the responsibility of the Commission staff, and undertaken with the advice of the Commission. Ordinary artwork maintenance of artworks in the Civic Art Collection is the responsibility of the City department at which the artwork is sited and shall be undertaken at the direction of Commission staff.

#### §26.0724 Acquisition of Artworks

- (a) Commission staff may authorize the purchase of artworks for inclusion in the Civic Art Collection following the review and recommendation of the Commission.
- (b) Commission staff shall, on behalf of the City, accept, with or without conditions, or reject donations, bequests or incoming loans of artwork following the review and recommendation of the Commission. Title to all donated and bequeathed artworks accepted by the City and accessioned into the Civic Art Collection shall be vested and held in the name of the City.

#### §26.0725 Deaccession and Disposal of Artworks

- (a) Commission staff shall deaccession and dispose of artworks from the Civic Art Collection, following the review and recommendation of the Commission.

- (b) When an artwork to be deaccessioned and disposed of through sale has an estimated fair market value of \$250,000 or more, Commission staff shall submit a report on the recommendation for the sale to the Mayor, City Council and City Manager prior to initiating the sale.
- (c) When an artwork is deaccessioned and disposed of through sale, the artwork shall be sold through methods either administered by or approved by the Purchasing Agent. When an artwork is deaccessioned and disposed of through sale or exchange, the Executive Director may administer acceptance of all deeds of conveyance necessary and proper to affect a duly authorized sale or exchange.

**§26.0726 Loans from the Civic Art Collection**

Commission staff is authorized to loan artworks from the Civic Art Collection to City departments, agencies, institutions, organizations or galleries. Loans are made according to the terms and conditions of loan agreements.

**§26.0727 Reproductions or Adaptations of Artworks**

Commission staff is authorized to negotiate with the copyright holder for each artwork in or proposed for inclusion in the Civic Art Collection for the purpose of acquiring a license to make, or cause to be made reproductions or adaptations of artworks. Reproductions or adaptations of artworks are made according to the terms and conditions of the licensing agreement.

**§26.0728 Proceeds from the Sale, Loan, Reproduction or Adaptation of Artworks**

All monies received from the sale of artworks from the Civic Art Collection must be expended on new acquisitions for the Civic Art Collection. Proceeds from the loan of artworks from the Civic Art Collection or from the licensing of the making of reproductions or adaptations thereof, less any payments due, shall be deposited into the Public Art Fund.

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